FILED
DEC 23 1992
OFFICE OF THE CLERK

No. 92-780

IN THE
Supreme Court of the United States
OCTOBER TERM, 1992

NATIONAL ORGANIZATION FOR WOMEN, INC., *et al.*,
Petitioners,
v.
JOSEPH M. SCHEIDLER, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF IN OPPOSITION OF RESPONDENTS JOSEPH M. SCHEIDLER, TIMOTHY MURPHY, ANDREW SCHOLBERG, AND THE PRO-LIFE ACTION LEAGUE, INC.

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QUESTIONS PRESENTED

Petitioners, a national membership organization, and two abortion clinics, brought claims under the Sherman and Clayton Antitrust Acts, 15 U.S.C. § 1, § 26, the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1962, and pendent state claims seeking treble damages and a nationwide, federal injunction against persons and organizations who engage in political protest against abortion clinics—including, *inter alia* demonstrations, rallies, picketing, leafletting, sit-ins, and other First Amendment-related activities. Over the course of five years, Petitioners engaged in voluminous discovery and filed a first and second amended complaint. The district court dismissed all counts of their second amended complaint. The court of appeals unanimously affirmed.

1. Whether Petitioners' antitrust complaint against demonstrators was properly dismissed when they failed to allege that the demonstrators engage in business activity in the commercial marketplace, are commercial competitors, have any market power, have any commercial motive, or engage in any commercial conspiracy.

2. Whether Petitioners' complaint alleging RICO extortion by demonstrators was properly dismissed when they failed to allege any economic motive in the enterprise or the predicate act.

3. Whether Petitioners' complaint alleging RICO extortion was properly dismissed when they failed to allege that the demonstrators obtained, or conspired to obtain, any property from the clinics, doctors, patients, or prospective patients.

4. Whether Petitioners' antitrust and RICO claims were properly dismissed when they failed specifically to tailor their claim against demonstrators whose exercise

of First Amendment rights of free speech, assembly, petition, and association was allegedly intertwined with sporadic acts of trespass, theft, and vandalism.

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BRIEF IN OPPOSITION OF RESPONDENTS JOSEPH M. SCHEIDLER, TIMOTHY MURPHY, ANDREW SCHOLBERG, AND THE PRO-LIFE ACTION LEAGUE, INC.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The First Amendment to the U.S. Constitution provides, in pertinent part:

> Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Hobbs Act provides, in pertinent part:

> (1) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

18 U.S.C. § 1951(b)(2) (1982). Other statutory provisions are reproduced in the Petition (Pet. at 2-3).

STATEMENT OF THE CASE

Petitioners filed a single-count complaint under the federal antitrust laws (Sherman Act, 15 U.S.C. § 1, and the Clayton Act, 15 U.S.C. § 26), in 1986 in the District of Delaware against Respondents and other defendants.[1] The suit was voluntarily dismissed. Petitioners refiled their single-count, antitrust class action complaint in the Northern District of Illinois on October 17, 1986 (No. 86 C 7888). Petitioners sought declaratory and nationwide injunctive relief. No class was ever certified.

Petitioners pursued discovery nationwide—reviewing hundreds of tapes, files, and correspondence of Respondents and numerous others—which ensued for four years, with depositions conducted in seven cities across the country—including Chicago, Fargo, North Dakota, Fort Wayne, Indiana, St. Louis, Durham, North Carolina, Jacksonville, Florida, and Washington, D.C. The extensive discovery matters caused the district court to defer discovery matters to a federal magistrate.

Petitioners filed a first amended complaint on February 2, 1989, which added alleged violations of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1962, in addition to the original

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[1] The plaintiffs originally consisted of the National Organization for Women, the Delaware Women's Health Organization, and the Ladies Center of Pensacola. The Ladies Center was dismissed from the case. Petitioner Summit Women's Health Organization was added in the first amended complaint. For purposes of brevity, Respondents refer to the plaintiffs as the "Petitioners" throughout this Brief in Opposition.

Joseph Scheidler and the Prolife Action League, Inc. were among the original defendants. Timothy Murphy and Andrew Scholberg were added as defendants in amended complaints. For purposes of brevity in this Brief in Opposition, "Respondents" refers to Joseph Scheidler, the Pro-life Action League, Inc., Timothy Murphy, and Andrew Scholberg, unless otherwise indicated. Pursuant to this Court's Rule 29.1, the Pro-Life Action League, Inc. has no parent company or subsidiary.

Sherman Act allegations, and added prayers for treble damages. The first amended complaint also added a host of new defendants, including Vital-Med Laboratories and Conrad Wojnar, alleged new conspiracies, and added three new pendent state claims. The conspiracy allegations were so broadly drawn that Petitioners later claimed that they embraced hundreds of thousands of co-conspirators.

After nearly three years of discovery, Petitioners filed a second amended complaint on September 22, 1989 (hereinafter "the Complaint") (*See* Appendix 1a). The Complaint alleged that Respondents conspired to "drive every clinic in the United States . . . out of business" (Complaint, § 26) and that they had engaged in "unlawful, concerted action, including repeated acts of trespass, extortion and vandalism directed at women's health centers. . . ." (¶ 27). Petitioners also alleged the theft of fetal remains and their use in a media campaign against abortion clinics. They alleged that Respondents and other defendants, and one or more employees of defendant Vital-Med, "conspired to steal fetal remains located in Vita-Med's research laboratory in Northbrook, Illinois," stole some 4,000 specimens over a period of 10 months, and conspired to "use the specimens as part of their drive to disrupt the operations of health clinics generally. . . ." (¶¶ 64-66). Among the alleged uses were "actions designed to intimidate and harass clinics by focusing attention on the stolen specimens" including "highly publicized" funeral masses and burials (¶¶ 37, 64-78). Petitioners alleged that the purpose of Respondents' actions "is to force all clinics that perform abortions out of business and to eliminate the choice of abortion for women who are pregnant." (¶ 85).

The only allegations about "competition" are contained in ¶¶ 2, 17-19, and 80-91. Paragraph 2 alleged:

> In furtherance of their conspiracy, defendants and their co-conspirators have, inter alia . . . established

> competing pregnancy testing and counseling facilities in the vicinities of the clinics, sometimes in the same buildings where clinics are located, homes for pregnant women and, on information and belief, prenatal and delivery services, foster homes and private adoption agencies.

(App. 2a). Paragraph 11 also alleged that Randall Terry "runs a pregnancy testing and counseling center in Binghamton, New York" and ¶ 13 alleged that Conrad Wojnar "runs a number of anti-abortion women's medical clinics in the Chicago area. . . ." In addition, the "business" of the Pro-Life Action League, Inc. (¶ 17), the Pro-Life Direct Action League, Inc. (¶ 18), and Operation Rescue (¶ 19) is alleged to "consist[] of disrupting and closing women's health centers that perform abortions through the use of illegal activity."

Count I, brought by N.O.W. and the abortion clinics, alleged that the actions of various defendants were designed and threatened to restrain interstate trade, had "an anti-competitive effect," increased expenses and costs, made it more difficult for women to obtain abortions, damaged the abortion businesses, interfered with "ongoing business and contractual relationships" and threatened to increase the risk of medical complications "by exposing . . . women to a pattern of harassing and intimidating conduct designed to create stress and to stop them forcibly from exercising their choice to have an abortion" (¶¶ 80-91). Petitioners asked for declaratory relief "that the actions of" Respondents "have violated the rights of" the clinics and their patients to be free of restraints of trade and for injunctive relief to enjoin Respondents both "from carrying out a concerted effort to drive women's health centers . . . out of business" and "from using unlawful means to drive women's health centers . . . out of business." (¶¶ 79-93).

The RICO claims were brought only by the abortion clinics, also as purported class actions. Count II is a RICO

§ 1962(a) claim. Petitioners alleged that Respondents formed enterprises "with common purposes, including driving all clinics that provide abortion services out of business" (¶¶ 95-96). The sole RICO predicate act alleged is extortion, described as:

> Defendants conspired to, attempted to or did wrongfully use threatened or actual force, violence or fear to induce or attempt to induce the employees of affected clinics to give up their jobs; doctors involved with affected clinics to give up their economic right to practice medicine at the plaintiff clinics; patients of affected clinics to give up their right to obtain services at the plaintiff clinics; and prospective patients of clinics to give up their constitutional right to decide whether and where to obtain medical services free from fear of violence or threatened or actual force.

(¶¶ 97-98). Petitioners made no allegations that any defendant or co-conspirator attempted to obtain, or obtained, any property or thing of value from any clinic, doctor, patient, or prospective patient.

Counts III and IV are RICO § 1962(c) and (d) claims. They alleged that Respondents and other defendants are associated with one of the enterprises, Pro-Life Action Network (PLAN), and "participated in PLAN's affairs through a pattern of racketeering activity" (¶ 109), namely the extortion alleged in ¶¶ 97-98. Petitioners alleged that Respondents engaged in a conspiracy to "use the income they received from a pattern of racketeering activity . . . to establish or operate PLAN" and "agreed to the commission of the extortionate acts from which the above-mentioned income would derive" (¶¶ 112-113). The remaining counts alleged pendent state claims.

On August 30, 1990, Respondents filed a motion to dismiss the Complaint or in the alternative for a more definite statement in the form of a RICO cases statement. Petitioners filed a RICO cases statement on March 18, 1991, including 29 pages of text and two appendices of 41

and 36 pages respectively, alleging numerous acts of violence, including even arson and bombing by Respondents' co-conspirators. The Complaint alleged sporadic acts of trespass, vandalism, assault, battery, and theft by Respondents, other defendants, or unnamed co-conspirators (¶¶ 2, 27, 40, 42, 46-50, 61, 64, 67, 74, 97-98). There are no allegations in the Complaint of bombing or arson by any Respondent, other defendants, or their "co-conspirators."

Two months later, on May 28, 1991, the district court granted Respondents' motion to dismiss, holding that Petitioners failed to state a claim under either the antitrust laws or RICO, and dismissed the case in its entirety. *National Organization of Women v. Scheidler*, 765 F. Supp. 937 (N.D. Ill. 1991). The court of appeals unanimously affirmed. 968 F.2d 612 (7th Cir. 1992). A petition for rehearing was filed and denied on August 4, 1992, with "no judge in active service" requesting a vote on the suggestion for rehearing en banc (Pet. App. G-2). The Petitioners filed their petition for certiorari on November 2, 1992. An extension of time to December 23, 1992 to file Briefs in Opposition was granted to all Respondents.

REASONS FOR DENYING THE WRIT

From the founding, political protest has played an integral role in shaping public opinion and policy in American life. Our nation was born of the political "demonstrations" and "riots" instigated in response to the Stamp Act of 1765. J. Ferling, *John Adams: A Life* 41-42 (1992). The "crisis caused many in the colonies to rethink ingrained attitudes" and "transformed the constitutional and ideological outlook of many within the colony." *Id.* at 42. Seventy-five years later, abolitionists pursued a strategy to rescue slaves from their owners in cities both north and south. Rescue—to prevent loss of freedom or life—has a venerated place as a part of

political expression in American history. L. Filler, *The Crusade Against Slavery: 1830-1860* (1960). More recently, the Reverend Martin Luther King, Jr. and the civil rights movement pursued "non-violent direct action," including picketing, marches, leafletting, boycotts, and sit-ins. *See e.g., Taylor v. Louisiana*, 370 U.S. 154 (1962); *Garner v. Louisiana*, 368 U.S. 157 (1961). Such sit-ins were criticized as "violent" because "they created 'a great deal of tense pushing and shoving, in an atmosphere that is electric with restrained violence and hostility.'" S. Oates, *Let the Trumpet Sound: The Life of Martin Luther King, Jr.* 161 (1985). The demonstrators sought to create "tension" to induce change and to bear witness to the evils against which they were protesting.[2]

Under Petitioners' theory of this case, these Americans were racketeers and antitrust violators, not patriots or social reformers. Those who dumped British tea in Boston Harbor "extorted" the right to do business under "force, threat or fear" and made it harder to "compete" with other tea merchants. Those who rescued slaves "extorted" the right to trade slaves and made it harder to "compete" by increasing costs. The civil rights demonstrators of the 1960's "extorted" the right to serve food to whites only at lunch counters and had an "anti-competitive effect" by boycotting white merchants.

Here, Petitioners bootstrap what are, at most, state torts and misdemeanors through elaborately contrived interpretations of the Sherman Act and RICO in an attempt to obtain federal jurisdiction and a nationwide

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[2] Oates at 216 ("The purpose of direct action, King said, was 'to create such a crisis and foster such a tension that a community which has constantly refused to negotiate is forced to confront the issue.") 218, 287, 327, 397; D. Garrow, *Bearing the Cross: Martin Luther King, Jr. and the Southern Christian Leadership Conference* 236 (Vintage Books 1988) ("'If you create enough tension, you attract attention to your cause and get to the conscience of the white man,' King explained."), 246-47, 273-74.

injunction against their ideological opponents, pro-life demonstrators. This case does not warrant this Court's review because the decision below was clearly correct and presents no conflicts with other circuits. The Sherman Act was not intended to apply to non-commercial, political protest by demonstrators not involved in the commercial marketplace. Likewise, RICO requires that the predicate act or enterprise be economically motivated. Furthermore, the judgment below could be affirmed on three alternative grounds. First, the *Noerr-Pennington* doctrine immunizes these political demonstrators. Second, no Hobbs Act extortion was properly pled in this case because Petitioners did not, and cannot, charge that the demonstrators obtained any property of the Petitioners or their patients. Third, Petitioners were subject to a heightened pleading burden which they repeatedly spurned, seeking relief against First Amendment-protected activity. Accordingly, the petition should be denied.

I. THERE IS NO CONFLICT IN THE CIRCUITS ON THE COURT OF APPEALS' HOLDING THAT THE SHERMAN ANTITRUST ACT DOES NOT APPLY TO NON-COMMERCIAL PROTEST.

Petitioners' claimed conflict in the circuits on the antitrust holding is illusory. It is based on a misreading of the court of appeals' opinion and on a 1920 Eighth Circuit case that is distinguishable and is no longer good law. Neither warrants review by this Court.

Petitioners' claim that the court of appeals created a "good motives exemption" to the Sherman Act is spurious. The court of appeals did not conclude that Respondents had "good motives"; indeed, the court exercised judicial restraint by finding no Sherman Act liability despite its comment that the demonstrators' actions (merely alleged) were "reprehensible." 968 F.2d at 621, 630. Rather, the court held that the Sherman Act was not intended to apply to non-commercial public opposition and demon-

stration, notwithstanding an impact on business. *Id.* at 614, 617, 622. The Sherman Act was "intended to prevent business competitors from making restraining arrangements for their own ecoonmic advantage." *Id.* at 621.

The sole alleged conflict that Petitioners can identify is between the decision below and a 1920 case from the Eighth Circuit, *Council of Defense v. International Magazine Co.*, 267 F. 390 (8th Cir. 1920). This case is distinguishable upon the facts and the holding. There, a state-created committee implemented a boycott to affect the competition between "patriotic" and "unpatriotic" magazines by trying to persuade newsdealers to cancel contracts with an "unpatriotic" magazine owned by William Randolph Hearst. The aim was to single out and destroy Hearst's business. *Id.* at 411. However, commercial relationships and activities were directly at issue and, unlike Respondents here, the Council of Defense did not seek to ban the market altogether.[3]

More important, the Seventh Circuit's conclusion that *Council of Defense* is no longer good law is clearly correct. It was significantly limited by the Eighth Circuit in *Missouri v. NOW*, 620 F.2d 1301, 1304 n.4, 1315 n.16 (8th Cir. 1980). Moreover, it precedes this Court's clearly controlling decisions in *Apex Hosiery Co. v. Leader*, 310 U.S. 469 (1940), and *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982), on which the Seventh Circuit extensively relied. *Apex Hosiery* clearly establishes that "the Sherman Act was directed only at those restraints whose evil consequences are derived from the suppression of competition in the interstate market,

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[3] It is apparent from the face of the Complaint that Respondents sought to eliminate abortion, that is, not to monopolize the market but to ban it. Similar protest has been targeted against numerous industries (Pet. App. A-17). This is a classic example of "decommodification" (Radin, *Market-Inalienability*, 100 Harv. L. Rev. 1849 (1987)) or an "inalienability rule." Calabresi & Melamed, *Property Rules, Liability Rules, and Inalienability: One View of the Cathedral*, 85 Harv. L. Rev. 1089 (1972).

so as 'to monopolize the supply, control its price or discriminate between its would-be purchasers.'" 310 U.S. at 511 (cit. omit.). In light of the clear consistency between *Apex Hosiery* and the decision below, *Council of Defense* creates no conflict that is worthy of this Court's consideration.

II. THE COURT OF APPEALS' ANTITRUST DECISION WAS CLEARLY RIGHT BECAUSE PETITIONERS FAILED TO ALLEGE THAT THE DEMONSTRATORS ENGAGE IN BUSINESS ACTIVITY IN THE COMMERCIAL MARKETPLACE, ARE COMMERCIAL COMPETITORS, HAVE ANY MARKET POWER, HAVE ANY COMMERCIAL MOTIVE, OR ENGAGE IN ANY COMMERCIAL CONSPIRACY.

Political activity intersects antitrust analysis at two distinct points. First, if the activity is essentially political, rather than commercial, the activity is not subject to the reach of the Sherman Act just because it affects business. *Klor's, Inc. v. Broadway-Hale Stores, Inc.*, 359 U.S. 207, 213 (1959); *Parker v. Brown*, 317 U.S. 341 (1943); *Apex Hosiery v. Leader*, 310 U.S. 469 (1940). Second, if commercial competitors employ political activities to influence any branch of government, their commercial activity—which might otherwise be subject to antitrust regulation—may be immunized. *Eastern Railroad v. Noerr Motor Freight*, 365 U.S. 127 (1961); *United Mine Workers v. Pennington*, 381 U.S. 657 (1965). In this case, the political and non-commercial nature of Respondents' motive and activity serves to both absolve and immunize them.

Petitioners filed this antitrust case against political demonstrators who consider Petitioners' abortion business to be inherently evil and, therefore, seek to suppress it through political protest. The court of appeals focused on the intent and legislative history of the Sherman Act and concluded that it was not meant to "outlaw any contract, combination or conspiracy that restrains trade."

968 F.2d at 617. "Congress did not intend to reach every activity that might affect business" (*Id.* at 620) and the Sherman Act was "intended to prevent business competitors from making restraining arrangements for their own economic advantage." *Id.* at 621. The court concluded that "[d]efendants are not involved in business, and have no ability to concentrate economic power." *Id.* As the district court succinctly put it, the antitrust laws were not intended to apply to a case "which involves political opponents, not commercial competitors, and political objectives, not marketplace goals." 765 F.Supp. at 941.

The absence of commercial competition and marketplace goals is apparent on the face of the Complaint. The substance of Petitioners' antitrust claim is contained in ¶¶ 1, 2, 11, 13, 79-93. They allege that there is an "agreement" between Respondents to "restrain interstate trade" and that their activities have restrained trade (¶ 81); that the agreement and activities have "an anticompetitive effect" (¶ 82); that abortion clinics have been "damaged" by reason of the activities (¶ 83); that the activities force clinics out of business and increase costs (¶¶ 86-87); that the activities make it "more difficult for women to obtain abortions" (¶ 88); that abortion clinics "are less able to compete with other facilities offering the same or similar services" (¶ 89); that the activities "interfere with the on-going business and contractual relations" (¶ 90); and that these violate Petitioners' rights to be free of restraints of trade (¶ 93).[4] These say no more than that anti-abortion protests have affected the abortion industry.

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[4] Petitioners' contention that the "lower courts agreed that the conspirators' goal was to lessen competition" is false. No evidentiary hearings were held in the lower courts, and no findings of fact were made. Petitioners' Appendix at D-3 shows that the district court was merely describing the Complaint as alleging that Respondent Wojnar's activities "were . . . intended to . . . lessen competition by putting them out of business."

While it is clear on the face of the Complaint that the parties are "competitors," their competition is ideological. No facts are well pled that indicate that Respondents are engaged in business, that the parties are commercial competitors, that Respondents have employed any commercial means to suppress Petitioners' business, or that Respondents are engaged in any commercial conspiracy that is cognizable under the antitrust laws. The Complaint alleges that Respondents engage in a wide variety of activities, including "block[ing] ingress and egress to clinics," "invad[ing] clinics and damaged property," and trespass (¶ 2). Each of these activities may have an impact on the business of the clinics. But that does not mean that the activities have an "anti-competitive effect" within the meaning of the antitrust laws. "Anti-competitive" is a term of art which assumes commercial activity within the market. No allegation is made, or can be, that Respondents are manufacturers, purchasers, suppliers, retailers, or dealers, or that the parties are engaged in any horizontal or vertical relationship. The antitrust laws, however, are concerned about eliminations of commercial, not ideological, rivalry. In order for there to be "competition," there must be competitors, and in order for there to be "competitors," they must be rivals in the business. R. Bork, *The Antitrust Paradox* 49 (1978).[5] The only "marketplace" in which the parties are jointly involved is the "marketplace of ideas." *Schachar v. American Academy of Ophthalmology*, 870 F.2d 397, 400 (7th Cir. 1989). Commercial, and not ideological, competition is the subject of the Sherman Act, as is clear from even a passing reference to basic antitrust precedents.[6] As a matter of law, these allega-

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[5] "Competition is inherently a process in which rivals seek to exclude one another." Bork at 49. Competition involves the "effectiveness of rivalry in the general marketplace." Bork at 340.

[6] *See e.g., United States v. General Motors Corp.*, 384 U.S. 127, 146 (1966) ("where businessmen concert their actions in order to deprive others of access to merchandise which the latter want to

tions, therefore, fail to state a claim under the antitrust laws.

The court of appeals' decision that an antitrust defendant must have a commercial motive or means of action is supported by substantial caselaw. The seminal case is *Apex Hosiery Co. v. Leader*, 310 U.S. 469 (1940), involving a sit-down strike, where this Court held that the Sherman Act was "directed to control of the market by suppression of competition in the marketing of goods and services, the monopolistic tendency of which had become a matter of public concern. The end sought was the prevention of restraints to free competition in business and commercial transactions. . . ." *Id.* at 493. *Apex Hosiery* made clear, "The Sherman Act was not enacted . . . to afford a remedy for wrongs, which are actionable under state law, and result from combinations and conspiracies which fall short, both in their purpose and effect, of any form of market control of a commodity, such as to monopolize the supply, control its price, or discriminate between its would-be purchasers.'" *Id.* at 512. Moreover, in *Missouri v. NOW*, 620 F.2d 1301 (3th Cir.), *cert. denied*, 449 U.S. 842 (1980), the Eighth Circuit held that "it was competitors in commerce that Senator Sherman had in mind as the concern of his bill" and "the activities that were meant to be covered are competitive activities by competitors with some self-enhancement motivation . . . ." *Id.* at 1309. The court found that NOW's boycott for ratification of the ERA was "further afield from the central focus of the Sher-

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sell to the public, we need not inquire into the economic motivations underlying their conduct."); *Klor's, Inc. v. Broadway-Hale Stores, Inc.*, 359 U.S. 207, 213 n.7 (1959) ("The Court in *Apex* recognized that the Act is aimed primarily at combinations having commercial objectives and is applied only to a very limited extent to organizations, like labor unions, which normally have other objectives."); *United States v. South-Eastern Underwriters Association*, 322 U.S. 533, 553 (1944) (Act "aimed at combinations of business and capital organized to suppress commercial competition.").

man Act" than the railroad activities in *Noerr*. *Id.* at 1312. Likewise, in *Henry v. First Nat'l Bank of Clarksdale*, 595 U.S. F.2d 291 (5th Cir. 1979), *cert. denied sub. nom., Claiborne Hardware Co. v. Henry*, 444 U.S. 1074 (1980), the court held that state antitrust laws could not be used to enjoin boycotts intended to achieve political results. *Id.* at 303-304. (*Henry* derived from the same factual situation as *Claiborne Hardware*, 458 U.S. at 890 n.5.) Numerous cases support the same proposition.[7]

Petitioners' Complaint cannot survive on the allegation that Respondents sell books or tapes or obtain voluntary contributions (¶ 100). The clear purpose of the sale of books and tapes is educational, and the gathering and expenditure of funds and resources to publicize political views are clearly protected by the First Amendment. *Riley v. Nat'l Fed. of the Blind*, 488 U.S. 781 (1988); *Buckley v. Valeo*, 424 U.S. 1 (1976); *Murdoch v. Pennsylvania*, 319 U.S. 105, 110-111 (1943) ("But the mere fact that the religious literature is 'sold' by itinerant preachers rather than 'donated' does not transform evangelism into a commercial enterprise.").

Petitioners' reliance on ¶ 2 of their Complaint to save their case from dismissal fails. It states in relevant part:

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[7]*Parker v. Brown*, 317 U.S. 341, 351 (1943) (Sherman Act "prevented only 'business combinations'"); *Allied Int'l, Inc. v. Int'l Longshoreman's Assn.*, 640 F.2d 1368, 1380-81 (1st Cir. 1981), *aff'd on other grounds*, 456 U.S. 212 (1982); *Council for Employment and Economic Energy Use v. WHDH Corp.*, 580 F.2d 9 (1st Cir. 1978), *cert. denied*, 440 U.S. 945 (1979); *Franklin Music Co. v. Am. Broadcasting Companies*, 616 F.2d 528, 556 (3d Cir. 1979) (Sloviter, J., concurring); *Proctor v. General Conference of Seventh-Day Adventists*, 651 F. Supp. 1505 (N.D.Ill. 1986); *Barr v. National Right to Life Committee*, 1981-2 Trade Cases ¶ 64,315 (M.D.Fla. 1981); *Miller & Son Pav. Co. v. Wrightstown Tp. Civ. Assn.*, 443 F. Supp. 1268, 1271 (E.D.Pa. 1978) ("Congress intended its proscription to be limited to commercial transaction. . . The political nature of the Defendants' activities in this case . . . is . . . fatal to the Plaintiffs' antitrust claim.").

> defendants and their co-conspirators have . . . established competing pregnancy testing and counseling facilities in the vicinities of the clinics, sometimes in the same buildings where clinics are located, homes for pregnant women and, on information and belief, prenatal and delivery services, foster homes and private adoption agencies.

The district court found this to be the "sole allegation in the complaint of the commercial nature of defendants' activities" but held that it was not a sufficiently "plain statement" under FRCP 8(a) to state a claim. 765 F.Supp. at 940-41 n.1. Even accepting the allegations of ¶ 2 as true, they beg the question: while the parties may be ideological or political "competitors," no well pled facts are present that they are commercial competitors. Petitioners are required to plead an antitrust conspiracy with specificity. *Associated General Contractors v. Carpenters*, 459 U.S. 519, 528 n.17 (1983). The Complaint alleges that Randall Terry "runs a pregnancy testing and counseling center in Binghamton, New York . . ." (¶ 11) and that Conrad Wojnar "runs a number of anti-abortion women's medical clinics in the Chicago area and is the director of the Des Plaines Pro-Life Women's Center." (¶ 13) No allegation is made that Terry's "center" or Wojnar's "clinics" are engaged in any commercial or business related competition, that these centers "compete" with the Petitioners in any other sense than ideologically or politically, that these "centers" have any effect on business or commerce, that these "centers" have any anti-competitive effect on the business of abortion clinics, or that Terry's "center" or Wojnar's "clinic" has any impact on any local, state, or national market. These allegations, in short, are insufficient to state a claim for relief under the antitrust laws. Should this Court adopt Petitioners' construction that the Sherman Act applies to every non-commercial, political protest merely because

of the effect on business, the federal courts will be very busy indeed.[8]

III. THERE IS NO CONFLICT IN THE CIRCUITS ON THE COURT OF APPEALS' HOLDING THAT RICO REQUIRES THAT EITHER THE ENTERPRISE OR THE PREDICATE ACT BE ECONOMICALLY MOTIVATED.

Petitioners' contention that decision below conflicts with the Third Circuit's decision in *Northeast Women's Center, Inc. v. McMonagle*, 868 F.2d 1342 (3d Cir.), *cert. denied*, 493 U.S. 901 (1989), is illusory. The court below held that "RICO requires either an economically motivated enterprise or economically motivated predicate acts." 968 F.2d at 614. The Third Circuit did not address that question. Instead, it looked at the separate issue of whether extortion under the Hobbs Act requires an economic benefit or motivation. The Third Circuit cited *United States v. Cerilli*, 603 F.2d 415 (3d Cir. 1979), for the unremarkable and quite different proposition that "a person may violate the Hobbs Act without *himself* receiving the benefits of his coercive actions." 868 F.2d at 1350 (emphasis added). That is not the issue addressed by the court below.

Petitioners' claim is even more illusory that the decision below conflicts with the Eighth Circuit's decisions in *United States v. Clark*, 646 F.2d 1259 (8th Cir. 1981), or *United States v. Ellison*, 793 F.d 942 (8th Cir.), *cert. denied*, 479 U.S. 937 (1986). Their casual refer-

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[8] The judgment below may also be affirmed on the alternative ground that the Respondents are immune from antitrust liability under *Noerr-Pennington*. The right to petition is not limited to lobbying the legislative branch. As the First Amendment states, it is "the right . . . to petition the Government for a redress of grievances." Political protest is traditionally viewed as part and parcel of the right to petition. *Brown v. Louisiana*, 383 U.S. 131 (1966). The Eighth Circuit stated in *Missouri v. NOW*, 620 F.2d at 1317, "the right to petition is of such importance that it is not improper interference even when exercised by way of a boycott."

ence to these cases is particularly telling. The Eighth Circuit's seminal RICO case, involving bribery by Arkansas county judges, was *United States v. Anderson*, 626 F.2d 1358 (1980). The key RICO issue was the breadth of the "enterprise" concept. The *Anderson* court adopted a somewhat limited definition of "enterprise," requiring more than simply an association in fact, and held that "enterprise" includes "only an association having an ascertainable structure which exists for the purpose of maintaining operations directed toward an economic goal that has an existence that can be defined apart from the commission of the predicate acts. . . ." *Id.* at 1372. Subsequently, *Clark* also involved bribery by a Arkansas county judge, which, by its very nature, had an economic motive. The *Clark* court held that "enterprise" included the office of county judge and rejected the contention that "enterprise" was limited to private business organizations. 646 F.2d at 1264-65 & n.11 (noting that *Anderson* did not conflict). The *Clark* court did not address the question of economic motive in the enterprise or predicate act, the issue addressed here by the court below.

Finally, *Ellison* involved a leader of a paramilitary, white supremacist organization (CSA) involved in two predicate acts of arson. Ellison contended that the Government failed to prove "that there was any connection between one of the two arsons charged in the RICO count and any interest of CSA as an enterprise." 703 F.2d at 949. Following this Court's decision in *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 n.14 (1985), the Eighth Circuit rejected Ellison's claim that the Government had to prove that the racketeering activity "benefitted the enterprise" and required the Government to prove "only that the predicate acts *affected* the enterprise." 793 F.2d at 950 (emphasis in original) (citing *United States v. Cauble*, 706 F.2d 1322, 1332-33 n.24 (5th Cir. 1983), *cert. denied*, 465 U.S. 1005 (1984)). Although the Eighth Circuit found "no direct financial benefit to CSA," it did

sustain the finding that the arsons "affected" the enterprise and benefitted individual members. *Id.* The case did not involve the issue of economic motive and the court had no reason to consider it.

As such, no conflict exists, much less a conflict that is worthy of this Court's consideration. Clearly, the issue has not received the necessary consideration by the lower federal courts that calls for this Court's review.[9]

IV. THE COURT OF APPEALS WAS CLEARLY RIGHT IN HOLDING THAT RICO REQUIRES THAT THE PREDICATE ACT OR THE ENTERPRISE MUST BE ECONOMICALLY MOTIVATED.

Petitioners object to the holding of the court of appeals that "RICO requires either an economically motivated enterprise or economically motivated predicate acts." 968 F.2d at 614. Yet, the court of appeals relied on a clear, consistent series of cases. *United States v. Ferguson*, 758 F.2d 843 (2d Cir.), *cert. denied*, 474 U.S. 1032 (1985); *United States v. Bagaric*, 706 F.2d 42 (2d Cir.), *cert. denied*, 464 U.S. 840 (1983); *United States v. Ivic*, 700 F.2d 51 (2d Cir. 1983).

In claiming that the court of appeals' decision "substantially deviates" from the Second Circuit's decisions, the Petitioners conspicuously fail to cite Judge Friendly's seminal opinion in *United States v. Ivic*, 700 F.2d 51 (2d Cir. 1983). *Ivic* involved a conspiracy by Croatian

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[9] Petitioners pled a RICO § 1962(a) claim, alleging that Respondents "invested" voluntary donations they received from supporters into their alleged enterprises. The district court dismissed this claim, holding that donations received were not income "derived directly or indirectly, from a pattern of racketeering activity." 765 F. Supp. at 623. The court of appeals affirmed, holding that the Petitioners could not sustain a "but for" test. 968 F.2d at 625. Because Petitioners make no mention of their § 1962(a) claim in their Petition, they have necessarily waived it. Rule 14.1(a).

nationalists to kill or injure a Croation journalist and politician. The court rejected a RICO § 1962(d) count because the enterprise "was neither claimed nor shown to have any mercenary motive" (or economic motivation or financial purpose) because the goal was to advance Croatian independence. 700 F.2d at 59 & n.5, 60-61, 65. Shortly thereafter, the Second Circuit decided that *Ivic* did not absolve another group of Croatian nationalists of RICO liability when the enterprise "perpetrated an extensive international extortion scheme using the United States and foreign mails." *United States v. Bagaric*, 706 F.2d 42, 46, 49 (1983), *cert. denied*, 464 U.S. 840 (1983). When the *Bagaric* defendants adopted an extreme interpretation of *Ivic*—that the "economic motive of the enterpirse must surmount all others"—the *Bagaric* court rejected that construction, noting that *Ivic* did not require that "economic gain must be the sole motive of every RICO enterprise." *Id.* at 55, 53. Contrary to Petitioners' claim, the *Bagaric* court definitely did not conclude that the enterprise in *Bagaric* "lacked an economic motive" (Pet. at 9). Rather, the *Bagaric* court held that the prosecution may show financial purpose "through either the enterprise or the predicate acts of racketeering" (*Id.* at 56) and that the "core of the enterprise was the commission of more than fifty acts of the classic economic crime of extortion. . . ." *Id.* at 57-58.

Subsequently, in *United States v. Ferguson*, 758 F.2d 843, *cert. denied*, 474 U.S. 1032 (1985), involving a series of armed robberies and murders by the Black Liberation Army, the Second Circuit, following *Ivic*, held that there must be " '*some* financial purpose' . . . *either* to the criminal enterprise or the acts of racketeering." (cit. omit., emphasis in original). This was proven by the "economic crimes," including robbery, and the use

of the money obtained from the robbery in the enterpirse. *Id.* at 853.[10]

Accordingly, following *Ivic*, *Bagaric*, and *Ferguson*, the court below concluded that "the use of the term enterprise in §§ 1962(a) and (b) conveys a restriction to economic entities." 968 F.2d at 629. By so doing, as it noted, the court was not "adding elements to the offense, but merely fleshing out the definitions of those elements." *Id.* at 629. The Third Circuit in *McMonagle never mentioned* this line of cases and failed to address the precise issue whether the enterprise or predicate act under RICO must be economically motivated. No conflict exists that warrants this Court's review.

V. THE COURT OF APPEALS' RICO DECISION CAN BE AFFIRMED ON THE ALTERNATIVE GROUND THAT NO COMMON LAW EXTORTION WAS PLED UNDER THE HOBBS ACT.

If this Court granted *certiorari*, the issue whether the RICO enterprise or predicate act must be economically motivated need not be decided, because no predicate act was properly pled. Extortion was not properly pled because Petitioners failed to plead that any Respondent took or obtained any property from Petitioners or their patients. Whether a predicate act is properly pleaded logically precedes the question whether a predicate act, validly pled, requires an economic motivation. Because no conflict exists in the circuits on the extortion issue, no RICO issue is raised in this case that is worthy of this Court's consideration.

Just last term, in *Evans v. United States*, 112 S.Ct. 1881 (1992), despite differences on other issues, all Justices of

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[10] There is no parallel allegation in this case that Respondents obtained any property from Petitioners (or the clinics, employees, or patients) or used any such property obtained from them in any enterprise.

this Court unanimously agreed that "extortion" under the Hobbs Act must be interpreted in light of its common law meaning. The Court held that Congress "intended to adopt" the common law meaning of extortion in the Hobbs Act. *Id.* at 1885. The Court emphasized that the Hobbs Act definition of extortion was derived from New York law, which defined extortion as "the obtaining of property from another . . . with his consent, induced by a wrongful use of force or fear . . . ," and from the Field Code, which defined extortion as "the obtaining of property from another, with his consent, induced by a wrongful use of force or fear. . . ." *Id.* at 1886 n.9. The Court also noted that, at common law, extortion was defined "as the corrupt taking or receipt of an unlawful fee. . . ." *Id.* at 1887 n.14.

The allegations of "extortion" in the Complaint disregard the common law requirement of "taking" or "obtaining." Petitioners alleged that the Respondents "did wrongfully use threatened or actual force, violence or fear to induce or attempt to induce the employees of affected clinics to *give up* their jobs; doctors involved with affected clinics to *give up* their economic right to practice medicine at the plaintiff clinics; patients of affected clinics to *give up* their right to obtain services at the plaintiff clinics; and prospective patients of clinics to *give up* their constitutional right to decide whether and where to obtain medical services free from fear of violence or threatened or actual force." ¶ 98d (emphasis added). Respondents are alleged to "commit extortion by using threatened or actual force or fear to induce the Ladies Center's employees, doctors, patients, and prospective patients to *relinquish* their economic rights and property interests." (¶¶ 97-98 (emphasis added)).

Petitioners' Complaint failed to allege extortion within the meaning of the Hobbs Act, and thus as a predicate act of RICO, because no allegations were made that any Respondent "obtained," "took," or "received" any prop-

erty of the clinics, doctors, patients, or prospective patients. Petitioners alleged merely that the clinics, doctors, or patients were *deprived* of something. Extortion is a larceny-type offense, not a malicious destruction of property-type offense. Respondents were not alleged to have wanted to obtain, have, or take anything from the clinics, doctors, or patients, much less that any Respondent in fact obtained, took, or received any property from them. These allegations in the Complaint are insufficient, therefore, as a matter of law because the crime of extortion, like robbery and larceny, under the common law and under RICO, requires "the obtaining of property from another . . . ," as this Court recognized in *Evans v. United States*, 112 S.Ct. 1881 (1992).[11]

No conflict in the circuits is raised on this application of the Hobbs Act. Although this common law extortion argument was raised in the district court (R.336, p. 27) and in the court of appeals, neither the district court nor the court of appeals expressly addressed it, but assumed that extortion was properly pled. The court of appeals merely stated that "[t]he racketeering activity is extortion under the Hobbs Act . . ." and proceeded to address the district court's economic motive rationale. 968 F.2d at 623.

No pressing need is present in this case for the Court to resolve a conflict in the circuits on whether RICO contains an economic motive requirement. If this Court granted certiorari to address whether RICO contains an economic motive requirement, the Court could affirm the judgment of the court of appeals on the alternative rationale that no common law extortion within the meaning of the Hobbs Act or RICO was properly pled. This

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[11] *See People v. Ryan*, 232 N.Y. 234, 133 N.E. 572 (1921); 31A Am.Jur.2d *Extortion* § 42 (1989) (citing *People v. Squillante*, 18 Misc.2d 561, 185 N.Y.S.2d 357 (1959)); *People v. Whaley*, 6 Cow. 661, 663 (N.Y. 1853); Annot., *Exortion*, 135 A.L.R. 728, 732 (1941) (citing *People v. Griffin*, 2 Barb. 427 (N.Y. 1848)).

is a question that is more clearly presented on the face of the Complaint and more clearly resolved by this Court's precedents and the common law meaning of extortion, but it is an issue that does not require this Court's review at this time. Thus, whether RICO contains an economic motive requirement is not squarely presented in this appeal.

Moreover, this case is hardly the appropriate context to resolve a perceived conflict in the circuits as to whether RICO contains an economic motive requirement. It was hardly the purpose of Congress in enacting RICO to address demonstrations against abortion clinics. The facts are highly unusual and not typical of the economic crimes to which RICO was directed. They do not provide an appropriate factual basis to resolve any supposed conflict on an economic motive requirement under RICO.[12]

VI. THE COURT OF APPEALS' DECISION CAN BE AFFIRMED ON THE ALTERNATIVE GROUND THAT THE PETITIONERS FAILED TO PLEAD RICO AND ANTITRUST CLAIMS WITH SPECIFICITY WHEN THE COMPLAINT TOUCHES A BROAD RANGE OF FIRST AMENDMENT RIGHTS AND POLITICAL ACTIVITIES.

In *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982), this Court unanimously threw out overbroad conspiracy judgments against civil rights boycotters and demonstrators.[13] The Court held:

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[12] To avoid duplication, Respondents incorporate by reference the additional grounds for denying the Petition raised in the Briefs in Opposition filed by Respondents Randall A. Terry, Project Life, Operation Rescue, John P. Ryan and the Pro-Life Direct Action League.

[13] In *Claiborne*, a local chapter of the NAACP organized a boycott of white merchants and enforced the boycott by several means, including a number of acts of violence directed primarily at blacks not honoring the boycott, such as the firing of gunshots into their homes (on at least three occasions), slashing of tires, throwing a

> "[c]ivil liability may not be imposed merely because an individual belonged to a group, some members of which committed acts of violence. For liability to be imposed by reason of association alone, it is necessary to establish that the group possessed unlawful goals and that the individual held a specific intent to further those illegal aims. 'In this sensitive field, the state may not employ "means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved." ' ".

Id. at 920 (cit. omit.). The First Amendment requires "precision of regulation." *Id.* at 921.

> A massive and prolonged effort to change the social, political, and economic structure of a local environment cannot be characterized as a violent conspiracy simply be reference to the ephemeral consequences of relatively few violent acts.

Id. at 933. Here, no such specific allegations of antitrust or RICO violations, or conspiracies, are contained in the Complaint, nor is the relief sought so narrowly tailored.

First Amendment expression permeates the activities of Respondents. Although Petitioners portray Respondents as forming one monolithic entity, engaged in one common activity ("trespass, extortion, and vandalism"), Respondents use many different methods and widely diverse styles to suppress abortion on demand and to communicate to the public their opposition to abortion policy in this country. The centerpiece of the Complaint is Joseph Scheidler's manual on protest activities, *Closed: 99 Ways to Stop Abortion* (1985) (¶¶28-29, 77; R.109) [hereinafter *Closed*]. The activities alleged in the Complaint include sidewalk counseling, picketing, press conferences, leafletting, demonstrations and counter-

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brick through a windshield of a car, stealing whiskey purchased from a white merchant, and placing threatening phone calls. *Claiborne*, 458 U.S. at 902-06.

demonstrations, "blitzes," rallies, marches, advertising, burials of dead unborn children and religious services, blockades, and sit-ins. ¶¶ 2, 11, 35, 38, 40, 48-50, 55-56, 59-60, 73, 98(j), 125.[14]

The court of appeals' comment that "the complaint does not attempt to bar all anti-abortion activities" ignored the sweep of the Complaint on its face and in its prayers for relief. 968 F.2d at 616. Indeed, the Complaint is directed indiscriminately at the Respondents' "actions" and is thus overbroad. It is this overbreadth Respondents assail as a violation of the First Amendment. Respondents do not argue that "violence, criminal trespass, and vandalism are protected by the First Amendment." *Id.* at 621.

Rather, the Complaint was properly dismissed because Petitioners failed to make any distinction between legal or illegal activity when they sought injunctive relief aimed at enjoining Respondents both "*from carrying out a concerted effort* to drive women's health centers . . . out of business" and from "*using unlawful means* to drive women's health centers out of business." ¶ 93 (emphasis added). As this Court pointed out in *Claiborne*, "the term 'concerted action' encompasses unlawful conspiracies and constitutionally protected assemblies." 458 U.S. at 888. *See also*, Complaint ¶¶ 1, 26, 41. Petitioners' Complaint

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[14] Most, if not all, of these activities are protected under the First Amendment free speech and press clauses. *See Cantwell v. Connecticut*, 310 U.S. 296 (1940) (proselytizing in public places); *City of Houston, Texas v. Hill*, 482 U.S. 451 (1987) (verbal challenges to activities of another); *DeBartolo v. Florida Gulf Coast Bldg. & Const.*, 485 U.S. 568 (1988) (union's hand-billing against businesses in shopping mall); *Organization for a Better Austin v. Keefe*, 402 U.S. 415 (1971), *Lovell v. Griffin*, 303 U.S. 444, 452 (1938) (distribution of literature); *Gregory v. City of Chicago*, 394 U.S. 111 (1969) (gathering to march, sing, and chant); *Edwards v. South Carolina*, 372 U.S. 229 (1963) (same). Legislation that would attempt to regulate such activities must be "narrowly tailored" as to time, place and manner. *Clark v. Community for Creative Non-Violence*, 468 U.S. 288 (1984).

focused on the *impact* on access to abortion—which can be caused by picketing, leafletting, or sit-ins—rather than the legality of the expressive conduct under antitrust laws, RICO, or the First Amendment. Similarly, Respondents were indiscriminately alleged to commit "extortion" merely because their activity allegedly prevented women from having abortions, deterred women from soliciting abortion clinics, or induced personnel to stop doing abortions. (¶ 98(d)). The allegations of damage, and the declaratory relief sought, were broadly and indiscriminately targeted at "the actions" of the Respondents (¶ 83-93). These "actions" were deemed illegal because they allegedly invoke "fear" or "intimidation" among patients or clinic personnel (¶ 97). The RICO allegations were targeted at Respondents' "activities" (¶ 105). Likewise, the pendent state claim was vaguely directed at "the unlawful acts described above" (¶ 117).

Although Petitioners asserted that the objective of driving abortion clinics out of business is *per se* illegal (¶ 93), the use of protest to influence merchants and their business is squarely protected by the First Amendment. *DeBartolo v. Fla. Gulf Coast Bldg.*, 485 U.S. 568, 576 (1988) (union handbilling against businesses in shopping mall); *Thornhill v. Alabama*, 310 U.S. 88, 99 (1940) (picketing intended "to induce the customers not to patronize the employer."). Likewise, Petitioners charged that Respondents created an "intimidating" climate outside of abortion clinics (¶¶ 19, 56, 91, 97-98), thereby interfering with abortion clinic business, but picketing and handbilling are squarely protected by the First Amendment (*Edwards v. South Carolina*, 372 U.S. 229 (1963); *Cox v. Louisiana*, 379 U.S. 536 (1965) and "[s]peech does not lose its protected character, however, simply because it may embarrass others or coerce them into action." *Claiborne Hardware*, 458 U.S. at 910.[15]

[15] *See also, Claiborne Hardware*, 458 U.S. at 921 ("To the extent that the court's judgment rests on the ground that 'many' black

Petitioners charged that Respondents are part of a "conspiracy" to shut down abortion businesses but "effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly." *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958). Even if Petitioners could charge that some of the alleged co-conspirators had engaged in assault or battery, "the right to associate does not lose all constitutional protection merely because some members of the group may have participated in conduct or advocated doctrine that itself is not protected." *Claiborne Hardware*, 458 U.S. at 908, 925 n.68.[16]

Because the Complaint touches clear First Amendment activity, the allegations are subject to a heightened pleading burden, which Petitioners did not sustain

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citizens were 'intimidated' by 'threats' of 'social ostracism, vilification, and traduction,' it is flatly inconsistent with the First Amendment."); *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971) ("The claim that the expressions were intended to exercise a coercive impact on respondent [a realtor] does not remove them from the reach of the First Amendment."); *Watts v. United States*, 394 U.S. 705, 708 (1969) ("[t]he language of the political arena . . . is often vituperative, abusive, and inexact"); *Cox. v. Louisiana*, 379 U.S. 536, 551-52 (1965) (" 'a function of free speech . . . is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest . . . or even stirs people to anger' " (cit. omit.); *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964) ("profound national commitment to the people that debate on public issues should be uninhibited, robust and wide open"); *Police Department of City of Chicago v. Mosley*, 408 U.S. 92, 95 (1972) ("the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.").

[16] Petitioners have abused the "chameleon-like" character of conspiracy law that Justice Jackson criticized in *Krulewitch v. United States*, 336 U.S. 440, 447-49 (1949), and it should not be allowed to persist when the Complaint, on its face, touches First Amendment activity.

> [I]n any case, whether antitrust or something else, where a plaintiff seeks damages or injunctive relief, or both, for conduct which is prima facie protected by the First Amendment, the danger that the mere pendency of the action will chill the exercise of First Amendment rights requires more specific allegations than would otherwise be required.

Franchise Realty v. S.F. Loc. Joint Exec. Bd., 542 F.2d 1076, 1082-83 (9th Cir. 1976), *cert. denied*, 430 U.S. 940 (1977). *See generally*, P. Areeda, Antitrust Law ¶ 203.4b (1982 Supp.). This Court "has consistently recognized the sensitivity of First Amendment guarantees to the threat of harassing litigation, and has erected barriers to safeguard those guarantees." *Franchise Realty*, 542 F.2d at 1082. Likewise, the courts uniformly conclude "that the cost to society of permitting some unprotected speech to go unpunished was outweighed by the danger that protected speech might be deterred by an overly broad prohibition." *Herzbrun v. Milwaukee County*, 504 F.2d 1189, 1197 (7th Cir. 1974) (Stevens, J., concurring). Petitioners attempted exactly what *Claiborne Hardware* said cannot be done: Respondents' collective efforts "cannot be characterized as a violent conspiracy simply by reference to the ephemeral consequences of relatively few violent acts." 458 U.S. at 933.

Petitioners must allege *with precision* the exact conduct of Respondents that has no First Amendment protection and is subject to challenge under the antitrust laws or RICO. *Claiborne Hardware*, 458 U.S. at 921. Because Petitioners could not, or would not, meet this basic requirement—even in their Second Amended Complaint filed after four years of discovery and after a review of thousands of pages of documents produced and many depositions—their complaint was properly dismissed in its entirety.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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December 23, 1992

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APPENDIX

ЧИТАЛЬНИК

APPENDIX

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Civil Action No. 86-C-7888

NATIONAL ORGANIZATION FOR WOMEN, INC., on behalf of itself and its women members and other women who use or may use the services of women's health centers that provide abortions, DELAWARE WOMEN'S HEALTH ORGANIZATION, INC., and SUMMIT WOMEN'S HEALTH ORGANIZATION, INC., on behalf of themselves and all other similarly situated clinics,

Plaintiffs,

v.

JOSEPH M. SCHEIDLER, JOHN PATRICK RYAN, RANDALL A. TERRY, ANDREW SCHOLBERG, CONRAD WOJNAR, TIMOTHY MURPHY, MONICA MIGLIORINO, VITAL-MED LABORATORIES, INC., PRO-LIFE ACTION LEAGUE, INCL., PRO-LIFE DIRECT ACTION LEAGUE, INC., PROJECT LIFE, and OPERATION RESCUE,

Defendants.

SECOND AMENDED CLASS ACTION COMPLAINT

NATURE OF THE ACTION

1. This is a civil action pursuant to section 16 of the Clayton Act, 15 U.S.C. Section 26, and section one of the Sherman Antitrust Act, 15 U.S.C. Section 1; the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. Section 1962; and state law. Plain-

tiffs seek declaratory and injunctive relief and damages from defendants who have conspired, among themselves and with others, to drive women's health centers that perform abortions out of business through a pattern of concerted, unlawful activity.

2. In furtherance of their conspiracy, defendants and their co-conspirators have, inter alia, engaged in extortion against, threatened and intimidated clinic personnel and patients; intruded upon the confidential relationship between and invaded the privacy of, the clinics' personnel and patients; trespassed on clinic property, invaded clinics and damaged clinic equipment; blocked ingress and egress to clinics; destroyed clinic advertising; coordinated telephone campaigns to tie up clinic lines; set up appointments under false pretenses to keep legitimate patients from being able to make appointments, to cause clinics loss of income and to gain access to clinics; interfered directly with clinics' business relations, including but not limited to relations with patients, personnel, lessors, medical laboratories and other providers of goods and services; and established competing pregnancy testing and counseling facilities in the vicinities of the clinics, sometimes in the same buildings where clinics are located, homes for pregnant women and, on information and belief, prenatal and delivery services, foster homes and private adoption agencies.

3. The National Organization for Women ("NOW") sues on behalf of itself, its women members who use or may use the services of women's health centers that perform abortions, and other women who use or may use the services of such centers. The Delaware Women's Health Organization ("DWHO") and the Summit Women's Health Organization, Inc. ("Summit") sue on behalf of themselves and all other similarly-situated clinics performing abortions that defendants seek to drive out of business through a pattern of concerted, unlawful activity.

JURISDICTION

4. This Court has jurisdiction of this action pursuant to 28 U.S.C. Sections 1331 and 1337. Jurisdiction is additionally conferred by 15 U.S.C. Sections 15 and 25 and by 18 U.S.C. Section 1964. Jurisdiction over the state law claims is conferred by the doctrine of pendent jurisdiction. Plaintiffs' prayers for declaratory relief are authorized by 28 U.S.C. Section 2201.

PLAINTIFFS

5. NOW is a nationwide, non-profit organization with over 200,000 members dedicated to advancing and protecting the legal rights of women. Since its founding in 1966, NOW has had a special, on-going concern for the rights of women to reproductive freedom. Currently, NOW is engaged in a wide variety of efforts at the local, state, and national levels to ensure that women continue to have access to safe, economical abortion and family planning services. As part of NOW's Campaign for Women's Lives, NOW members escort patients at women's health centers, such as the named plaintiff clinics, DWHO and Summit, as well as at other clinics, including the Ladies Center, Inc. in Pensacola, Florida, to help protect them from harassment and intimidation by defendants and others. NOW is incorporated, and has its principal place of business in Washington, D.C.

6. DWHO is a Florida corporation with its principal place of business in Wilmington, Delaware. DWHO operates a women's health center that provides abortions, counseling to help patients explore alternatives to abortion, and a variety of gynecological services such as pelvic examinations, Pap tests, breast cancer screening, birth control counseling, pregnancy testing, and patient education. DWHO was the first out-patient clinic in Delaware of this type. From its inception in 1977 until 1983, it was the only such clinic in Delaware.

7. Summit is a partnership with its principal place of business in Milwaukee, Wisconsin. Summit operates a women's health center that is affiliated with DWHO, which also provides abortions, counseling to help patients explore alternatives to abortion, and a variety of gynecological services, such as pelvic examinations, Pap tests, breast cancer screening, birth control counseling, pregnancy testing, and patient education.

8. Clinics such as DWHO and Summit provide safe, low cost abortion services. Approximately three out of four abortions in the United States are preformed [*sic*] at clinics such as DWHO and Summit. A first trimester abortion performed at such clinics costs approximately two to five times less than the same procedure at a hospital.

DEFENDANTS

9. Joseph M. Scheidler is a resident of Chicago, Illinois, and has been the director of defendant Pro-Life Action League, Inc. at all times relevant to the lawsuit.

10. John Patrick Ryan is a resident of St. Louis, Missouri, and was the director of defendant Pro-Life Direct Action League, Inc. until September 25, 1987. He has consented to suit in the Northern District of Illinois.

11. Randall A. Terry is a resident of Windsor, New York. He runs a pregnancy testing and counseling center in Binghamton, New York, and is the Executive Director of Project Life and the national organizer of Operation Rescue. He has engaged in an illegal conspiracy with defendants and others in the Northern District of Illinois, and he has given workshops and speeches, held press conferences and taken other action in the Northern District of Illinois in furtherance of the illegal conspiracy alleged herein.

12. Andrew Scholberg is a resident of the Northern District of Illinois and has been the assistant director of

defendant Pro-Life Action League, Inc. since February, 1988. Before that he was the director of the Life and Family Center in St. Cloud, Minnesota.

13. Conrad Wojnar is a resident of the Northern District of Illinois. Wojnar runs a number of anti-abortion women's medical clinics in the Chicago area and is the director of the Des Plaines Pro-Life Women's Center.

14. Timothy Murphy is a resident of the Northern District of Illinois. Murphy has been a paid employee of defendant Pro-Life Action League, Inc. since September 1988 and worked as a volunteer for PLAL prior to that date.

15. Monica Migliorino is the director of Citizens for Life in Milwaukee, Wisconsin. She has engaged in an illegal conspiracy with defendants and others in the Northern District of Illinois and has taken action in this district, described in greater detail below, in furtherance of the illegal conspiracy alleged herein.

16. Vital-Med Laboratories, Inc. ("Vital-Med") is an Illinois corporation with its principal place of business in the Northern District of Illinois. Since 1984, Vital-Med or its predecessor has provided pathology testing and other services to DWHO, Summit and their affiliated clinics. Vital-Med is owned by the Washington National Insurance Company and Dr. Samuel C. Shih, in equal shares.

17. Pro-Life Action League, Inc. ("PLAL") is an Illinois corporation with its principal place of business in Chicago, Illinois. Its business consists of disrupting and closing women's health centers that perform abortions through the use of illegal activity.

18. Pro-Life Direct Action League, Inc. ("PDAL") is a Missouri corporation with its principal place of business in St. Louis, Missouri. Its business consists of disrupting and closing women's health centers that perform

abortions through the use of illegal activity. The PDAL has consented to suit in the Northern District of Illinois.

19. Operation Rescue ("OR") is an organization comprised of individuals and organizations including PLAL, PDAL, Scheidler, Ryan, Terry, Scholberg, Murphy and others. Its principal offices are located in Binghamton, New York. Its business consists of disrupting and closing women's health centers that perform abortions through the use of illegal activity. Through its leader Randall Terry and other agents and co-conspirators, OR has engaged in the illegal conspiracy complained of herein with its co-defendants and others in the Northern District of Illinois and has taken action in furtherance of the illegal conspiracy in this district.

20. Project Life, Inc. (the "Project") is an organization with its principal place of business in Binghamton, New York. Through its officer Randall Terry and other agents and co-conspirators, the Project has engaged in the illegal conspiracy complained of herein with defendants and others in the Northern District of Illinois and has taken action in furtherance of the illegal conspiracy in this district.

CLASS ALLEGATIONS

21. Plaintiffs DWHO and Summit bring this action on behalf of themselves and all other similarly situated women's health centers in the United States which perform abortions. The prerequisites of Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure are satisfied. The class is so numerous that joinder of all its members is impracticable; there are numerous questions of law or fact common to the class; the claims of the named plaintiffs are typical of the claims of the class; and the named plaintiffs will fairly and adequately protect the interests of the class. Defendants have acted on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declar-

atory relief and damages with respect to the class as a whole.

22. Plaintiff NOW brings this action on behalf of itself, its women members who use or may use the services of women's health centers that perform abortions, and all other women who use or may use the services of such health centers. NOW's women members who use or may use the services of women's health centers that perform abortions have standing in their own right, the interests NOW seeks to protect are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual NOW members in the lawsuit. Furthermore, there is a close relationship between the interests of NOW and the interests of other women who are not NOW members but who use or may use the services of women's health centers that perform abortions, and the ability of such women to represent themselves is limited. Finally, in the case of both the class of NOW's women members who use or may use the services of women's health centers that perform abortions and the class of women who are not NOW members but who use or may use the services of such health centers, the class is so numerous that joinder of all of its members is impracticable; there are numerous questions of law or fact common to the class; NOW will fairly and adequately protect the interests of the class; and the defendants have acted on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

INTERSTATE COMMERCE

23. Clinics such as DWHO and Summit are engaged in interstate commerce.

24. A substantial portion of DWHO's patients come from states other than Delaware and a substantial portion of Summit's patients come from states other than Wisconsin.

25. A substantial portion of medical supplies and equipment purchased by DWHO and Summit comes from out-of-state sources.

26. Since at least 1984, defendants have agreed and conspired among themselves and with others to drive every clinic in the United States, such as DWHO and Summit, out of business.

27. In pursuit of their goal to drive every clinic out of business, defendants have traveled throughout the country, used inter-state telephone lines and U.S. mail services for the purposes of engaging in, or encouraging others to participate in, unlawful, concerted action, including repeated acts of trespass, extortion and vandalism directed at women's health centers such as DWHO and Summit.

28. Defendant Scheidler has distributed throughout the United States a manual, *Closed: 99 Ways to Stop Abortion*, outlining methods intended to be used to interfere with and stop women's health centers such as DWHO and Summit from operating. Defendant Scheilder's manual encourages the use of unlawful activities and methods to drive women's health centers such as DWHO and Summit out of business.

29. Defendant Scheidler has traveled throughout the country training other persons to use the methods outlined in *Closed: 99 Ways to Stop Abortion* and encouraging them to drive women's health centers such as DWHO and Summit out of business.

30. Defendants Scheidler, Ryan, Terry, Scholberg, Murphy and Migliorino have traveled throughout the country leading efforts to shut down women's health cen-

ters such as DWHO and Summit and encouraging the use of unlawful methods to do so.

31. Defendants Scheidler, Scholberg and Murphy use defendant PLAL to carry out their unlawful objectives and activities.

32. Defendant Ryan has attempted to disrupt unlawfully the operations of numerous facilities performing abortions throughout the nation, resulting in Ryan's more than 300 arrests.

33. Defendant Ryan has conducted workshops and training sessions throughout the country designed to encourage other persons to disrupt unlawfully the operations of women's health centers that perform abortions.

34. Defendant Ryan has used defendant PDAL to carry out his unlawful objectives and activities.

35. Defendant Terry has traveled throughout the country encouraging, organizing and training other persons to use unlawful methods to close women's health centers that provide abortion, including blockades of the centers designed to stop ingress and egress.

36. Defendant Terry uses defendants OR and the Project to carry out his unlawful objectives and activities.

37. Defendants Murphy and Migliorino have shipped stolen laboratory specimens in interstate commerce and used interstate telephone and mail communications to help organize actions designed to intimidate and harass clinics by focusing attention on the stolen specimens in at least six states. Defendant Migliorino has also traveled across state lines for the purpose of accomplishing the theft and the local actions. The actions of Murphy, Migliorino, Scheidler and others have resulted in cancellation of a contract between defendant Vital-Med, the Illinois laboratory from which the specimens were stolen, and DWHO and Summit in Delaware and Wisconsin respectively.

FORMATION OF THE PRO-LIFE ACTION NETWORK

38. On May 10-12, 1984, the first National Pro-Life Conference, entitled "Action for Life," was held in Ft. Lauderdale, Florida. Defendant Scheidler presented a conference workshop on " Effective Confrontation: A "How To' of Picketing, Leafletting, Sit-ins and Blitzes." He also spoke at a "Ready for Action" rally. As part of their training, approximately 200 conference participants were taken by bus from the convention to the Women's Awareness Clinic, a clinic that offers abortion services. They surrounded the clinic, blocking all entrances and exits.

39. The following month, in June 1984, defendants Scheidler, Ryan, PLAL and PDAL and others met in Kansas City, Missouri, to formulate a six-month plan of national activities. The plan included so-called "blitzes" of abortion clinics in which anti-abortionists were to enter the clinics to disrupt their business, to gain media attention and to create a threatening and intimidating atmosphere at the clinics. The plan was designed to close down as many abortion clinics across the country as possible.

40. In April 1985, Action for Life II, the Second Annual Pro-Life Activist Conference was held in Appleton, Wisconsin. At this conference, participants named their coalition of "activist" anti-abortion groups the Pro-Life Action Network ("PLAN"). PLAN adopted an agenda of nationally-coordinated activities, including sit-ins, to shut down the abortion industry and pledged to create "a year of pain and fear" for anyone receiving or performing an abortion. Conference participants were greeted with a marque at the conference site that said "Have a Blast." Many wore firecrackers, to symbolize dynamite, as lapel pins. Defendants Scheidler, Ryan, PLAL and PDAL participated in this national meeting.

41. On March 25, 1986, defendants Scheidler, Ryan, PLAL and PDAL and others led a workshop in Pensacola, Florida, designed to encourage local residents to join them in taking unlawful, concerted action to drive women's health centers out of business.

42. On March 26, 1986, the said defendants and others went to the Ladies Center of Pensacola, Inc., a clinic in Pensacola, Florida which performs abortions, to lead an effort to shut it down. During the course of their efforts, four people, including Joan Andrews and John Burt, stormed the clinic. John Burt injured Linda Taggert, the clinic administrator, and Georgia Wilde, then-president of the Escambia county chapter of plaintiff NOW. Andrews ransacked a medical procedures room, destroying surgical supplies. Both Andrews and Burt had to be subdued by the police. Both had their bail revoked after they returned to the clinic following their arrests. Both were convicted on criminal charges as a result of their actions.

43. In April 1986, defendant Scheidler traveled to Delaware to organize and train persons to use his methods for shutting down women's health centers such as DWHO and to galvanize them into action.

44. On April 11, 1986, in furtherance of the nationwide effort to close down women's health centers that perform abortions, defendant Scheidler unlawfully entered DWHO. Scheidler told the then-clinic administrator, Cathy Connor, that he had come to "case the place" because he and his followers intended to force DWHO to close. He stated that he and others intended to make Delaware the first abortion-free state in the nation. He threatened Conner with reprisals should she refuse to quit her job. Conner subsequently left her job with DWHO in the spring of 1987.

45. On April 12, 1986, defendant Scheidler threatened that anti-abortionists "will get rid of [clinics such as

DWHO]. I proclaim that Delaware is going to become the first state in the union to be free of abortion facilities."

46. Defendant Scheidler was arrested and charged with criminal trespass and harassment on April 12, 1986, as a result of his actions at DWHO the previous day. He was subsequently convicted and fined.

47. Later in April 1986, defendants Scheidler, Ryan, PLAL and PDAL participated as organizers and workshop presenters at PLAN's third annual conference in St. Louis, Missouri, sponsored by defendant PDAL. Conference participants adopted goals for the year which included changing their language to refer to "sit-ins" as "rescue missions." The 1986-1987 PLAN Agenda called for "Days of Rescue" in June, August and December 1986, and January and April 1987. Field training for conference participants in rescue missions took place on Saturday, April 19, when 107 were arrested for blocking access to the Regency Park Center, a clinic in St. Louis that performs abortions.

48. On November 28 and 29, 1986, defendants Scheidler and Ryan returned to Pensacola to demonstrate at the Ladies Center and at the home of Judge William Anderson, who had sentenced Joan Andrews for her role in the invasion of the Ladies Center in March, 1986. Defendant Terry also traveled to Pensacola for the demonstrations.

49. On Friday, November 28, several hundred antiabortionists demonstrated at the Ladies Center for some four hours. Police had to order the demonstrators to let cars through their picket line and onto the Ladies Center property. Seven people were arrested for refusing to move from in front of a truck. After the arrests, the remaining demonstrators moved into the street and stopped traffic. The Escambia County Sheriff's Department had to be called in to help the Pensacola Police Department maintain order.

50. On Saturday, November 29, Scheidler and others addressed a rally followed by a march to the home of Judge Anderson where approximately one hundred protesters gathered. Scheidler went onto the porch of Judge Anderson's home and knocked on the door, but no one answered. Some demonstrators then refused to leave the porch and others left their protest signs behind. When officers began making arrests, Scheidler hurriedly left as the demonstration erupted into a confrontation with police. One officer was knocked to the ground, another was grabbed from behind by demonstrators attempting to aid people who had been arrested in escaping from the police. An officer's radio was taken from him by a demonstrator, and demonstrators surrounded a police cruiser in which one of those arrested had been placed by officers. Once again the city police requested assistance in crowd control from the Escambia County Sheriff's Department when demonstrators refused to move away from the surrounded cruiser. Eight people were arrested.

51. On December 14, 1986, PLAN held a mini-conference in St. Louis, Missouri, attended by defendants Ryan and Scholberg, among others. Defendant Scheidler sent a tape and received a copy of Scholberg's notes from the meeting, including the goals and guidelines adopted. The mini-conference was held in large part to discuss their concerns over public perception of the incidents November 28 and 29 in Pensacola. Scholberg and Ryan reported to the group that Scheidler might want to distance himself from PLAN for a while.

52. The participants agreed unanimously that one of their goals was to close down abortion clinics. They set out guidelines to ensure better control of PLAN demonstrations in order to improve public perception of the activist anti-abortion movement, improve media relations and promote an impression of unity in their movement. Ryan was named interim leader of PLAN, and it was agreed that some kind of leadership council, includ-

ing Ryan and Scheidler, should be on the agenda at the next PLAN Convention April 29 to May 2, 1987. The PLAN leaders agreed to meet again on January 21, 1987 in Washington, D.C.

53. From April 30 to May 2, 1987, all of the defendants except Wojnar, Migliorino and Vital-Med took part in the annual PLAN convention in Atlanta, Georgia, including field training on Saturday, May 2, 1987. Defendants Scheidler, Ryan, Terry and Scholberg were featured as speakers at the convention. Defendant Murphy attended. Seventy-nine people, including defendant Ryan, were arrested during the field training at the Women's Health Center. A news release from defendants before the Conference stated that they would try to stop abortions at Atlanta clinics "by any and all means available. No abortion clinic will be spared." At a news conference on Friday of the convention, defendant Scheidler said tactics such as blocking entrances of clinics and abrasive confrontations with women seeking abortions were necessary "to take their business away from [the providers]."

54. At the 1987 PLAN convention, a leadership council of five regional representatives was elected including defendants Scheidler, Ryan, Terry along with Andrew Burnett from Portland, Oregon, and Peter Lennox from Atlanta, Georgia. Burnett had been arrested at the 1986 PLAN convention field training; Lennox had attended the PLAN mini-conference in December 1986; and both Burnett and Lennox were featured speakers at the 1987 PLAN convention. The council met during the convention and met again on August 21, 1987 in Washington, D.C.

55. From August 25 through 27, 1988, defendant PLAL sponsored the 1988 PLAN convention in Chicago, Illinois. Defendants Scheidler, Scholberg, Murphy, Migliorino, Terry, PLAL, OR and the Project took part. Scholberg, Murphy and Migliorino were speakers. Defendant Terry also spoke to the convention on the activi-

ties of OR and was featured at a PLAN news conference on Friday, August 26 encouraging others to take part in planned field training the next day. On Saturday, August 27, conference participants, including defendants Scheidler, Murphy and others, took part in demonstrations at two clinics in Chicago. At one of the clinics, demonstrators used a tactic which defendant Scheidler called a "lock and block." Scheidler described it as a new method requiring fewer people to close a clinic. Demonstrators poured glue into the locks of the clinic's doors and locked a Kryptonite bicycle lock on the door handles. Defendant Murphy and another demonstrator also used bicycle locks, positioned around Murphy's neck and the other demonstrator's ankle, to attach themselves to a solid block of concrete which they had placed in front of the clinic door. Sixteen people, including defendant Murphy, were arrested in connection with the blockade of the clinic.

CARRYING OUT PLAN'S AGENDA: OPERATION RESCUE

56. Beginning no later than 1986, the PLAN Defendants and others in PLAN conspired to organize massive sit-ins and clinic invasions at abortion clinics nationwide. Their goal was to block access to the clinics in order to prevent patients and staff from entering or exiting and to create a threatening, intimidating atmosphere and a public image of danger in connection with the clinics. Defendant Terry presented the proposal to the other defendants in November 1986 in Pensacola, Florida.

57. Over a period of months, the plan to blockade clinics, organized under the name Operation Rescue, was discussed and revised. Following a visit between defendants Scheidler and Terry in New York in March 1987, the plan was finalized and brochures were printed showing defendants Scheidler, Ryan, Scholberg, PLAL and PDAL among the co-sponsors of OR.

58. The revised plan for OR was presented at the 1987 PLAN convention. The 1987-88 direct action schedule which came out of the convention included OR actions from April 30 through May 7, 1988, directed at clinics in the New York City area. Field training was scheduled for Thanksgiving 1987 in St. Louis, but at the PLAN leadership council meeting August 21, 1987 in Washington, D.C., defendants and the other organizers decided to change the location to the northeastern United States.

59. On November 28, 1987, PLAN organizers and others affiliated with them took part in an OR field training in Cherry Hill, New Jersey. Some 300 people from over a dozen states blocked access to the Cherry Hill Women's Center. Two hundred eleven were arrested.

60. From May 2 through May 6, 1988, in violation of both state and federal restraining orders, OR conducted four days of clinic blockades in New York City and Hicksville, Long Island. Arrests totalled 503 on Monday, May 2; 423 on Tuesday, May 3; 401 on Thursday, May 5; and 320 on Friday, May 6. Defendant Scheidler served as an official marshal during OR in New York. Defendants Scheidler and Scholberg were among those arrested. Scheidler was reported to have said he was there to see how the New York action was done, since they expected to do an OR action in Chicago as well.

61. On July 19, 1988, a series of OR actions began in Atlanta, Georgia. More than 1,200 participants were arrested during the nearly four months that the actions continued. Felony charges were brought against defendant Terry for inciting police assault and clinic trespass. At least 30 OR participants in Atlanta were arrested on felony charges: 8 for assaulting a police officer; 6 for terrorist acts; and 16 for false imprisonment.

62. In early October 1988, PLAN ended the OR actions in Atlanta as it geared up for a National Day of Rescue on October 29, 1988. For the National Day of Rescue, defendants Terry, Scheidler, Scholberg, Murphy, PLAL

and PDAL, and other PLAN participants organized simultaneous OR actions in some 40 cities around this country and in Toronto, Canada, blockading clinics and prompting nearly 2,500 arrests.

63. In addition to the foregoing nationally-coordinated OR actions, local OR actions have taken place continuously since the November 1987 field training in Cherry Hill, New Jersey. More than 9,700 participants have been arrested in OR actions since that time.

THEFT OF FETAL REMAINS

64. Beginning sometime before January 1988, defendants Scheidler, Scholberg, Murphy, Migliorino, Wojnar, PLAL and others, including one or more employees of Vital-Med, conspired to steal fetal remains located in Vital-Med's research laboratory in Northbrook, Illinois. DWHO, Summit and other clinics had sent the specimens to Vital-Med for pathology testing. Defendants conspired to use the specimens as part of their drive to disrupt the operations of health clinics generally, and the operations of clinics affiliated with plaintiffs DWHO and Summit specifically, by keeping women away from the clinics through threats and intimidation and by interfering with the clinics' relations with the laboratory, lessors and others.

65. For more than six years, Vital-Med had provided services to DWHO, Summit and their affiliated clinics. Pursuant to their contract, Vital-Med performed gross and microscopic pathology testing on the fetal specimens and provided sanitary disposal of the remains.

66. In approximately January 1988, defendant Wojnar received a call from a Vital-Med employee. The employee discussed with Wojnar how fetal remains could be stolen from the laboratory. Following this call, Wojnar discussed the matter with Murphy and, over a period of approximately ten months, continuing until approximately No-

vember 1988, Murphy, Migliorino and others, with the complicity of one or more employees of Vital-Med, stole some 4,000 specimens from the laboratory.

67. Murphy and Migliorino each made several trips to Vital-Med and coordinated the actions of other who went with them. They went onto Vital-Med's property and entered the laboratory building, either through a garage door or, on Sundays when that door was closed, through a side door which was left ajar. Then they would proceed to the loading dock, open sealed storage containers and remove fetal specimens from among other medical waste, and take them from the premises. On at least one occasion, an entire storage drum was stolen, using a hand cart. On one or more occasions, Vital-Med employees saw Murphy and Migliorino but did nothing to stop the thefts.

68. The fetal remains were stored initially at various co-conspirators' homes, including the homes of defendants Scheidler, Murphy, Migliorino, and Wojnar. The stolen storage drum was taken by Murphy to Scheidler's home, where it was stored for several weeks in a playhouse in Scheidler's backyard. Eventually a public storage facility was rented and the drum was moved there. Ultimately, after removing the fetal remains from the drum, Murphy deposited the drum with the remainder of the medical waste in an ordinary garbage dumpster in the Chicago area.

69. In the summer of 1988, Murphy, Migliorino and others sent some of the fetal remains to co-conspirators Frank Avila in Fort Wayne, Indiana; Lucy M. O'Keefe in Chapel Hill, North Carolina; Charlene Crommett in Fargo, North Dakota; Dee Becker, chairwoman of the Delaware Pro-Life Coalition in Wilmington, Delaware, and anti-abortionists in Tallahassee, Florida. Many of the shipments were made by United Parcel Service with the return address of PLAL. Others were shipped by private automobile.

70. In North Carolina, 157 fetuses were shipped by a network of anti-abortionists to O'Keefe, who kept them in her kitchen. O'Keefe made arrangements for a highly-publicized funeral mass and burial on August 23, 1988. In news stories about the incident, defendant Scheidler was widely quoted as stating that the fetuses had been found at a lab in Chicago and that they were "individually packaged and labelled . . . with the names of the mothers, doctors, dates and places the abortions were performed."

71. In Milwaukee, Wisconsin, Migliorino arranged a September 10, 1988 ceremony and burial for a reported 1,200 fetuses. Migliorino's group and 9 others issued a news release before the events stating that they intended to release the names of the Milwaukee clinics from which the fetal remains had been taken. Defendant Scheidler again confirmed publicly that the fetuses came from Vital-Med. In published news reports, Migliorino stated that 700 of the fetuses came from Summit and another Milwaukee clinic.

72. Migliorino shipped approximately 150 fetuses from Milwaukee to Fargo, North Dakota for burial ceremonies arranged by Crommett. In a press account, Migliorino stated that the fetuses came from the Fargo Women's Health Organization, an affiliate of DWHO and Summit, and had been shipped originally by the Fargo clinic to a suburban area of Chicago where anti-abortionists obtained them.

73. In Chicago, Fort Wayne, Wilmington and Tallahassee, similar actions took place. Fetal remains stolen from the lab in Northbrook were sent from the Chicago area, given local burial amidst a media campaign designed to generate negative publicity for women's health clinics generally and for affiliates of DWMO and Summit, specifically.

74. The public statements of defendant Scheidler and the local co-conspirators implied that the clinics were not

following proper procedures in disposing of medical waste. They carried the clear threat to suppliers, landlords, doctors and others who provide goods and services to the clinics, that they too could be targeted by defendants for theft and other illegal activity as well as harassment and public controversy.

75. The actions of defendants and their co-conspirators also presented an obvious threat to women who have used, or might in the future consider using the clinics, that their privacy would be invaded and the confidentiality of their treatment breached by having their names and personal, medical information revealed publicly.

76. Vital-Med has now informed the management company for DWHO, Summit and their affiliates that effective January 1, 1989, it would no longer accept fetal specimens from the clinics for analysis. Plaintiffs DWHO and Summit are informed that Vital-Med had been forced by a company referred to as "Washington National" to terminate this relationship with the clinics. On information and belief, the company to which Vital-Med referred is Washington National Insurance Corporation or one of its operating subsidiaries, which owns a 50% interest in Vital-Med, and whose counsel, Craig Edwards, and board member, Edward Cottrell, serve as Secretary and board member, respectively, of Vital-Med.

77. At approximately the same time that she was working on the plan to steal and then publicize the stolen fetal remains, Migliorino also was engaged in a campaign to force the new lessor of Summit to breach its lease with the clinic. Following techniques outlined in defendant Scheidler's book, Migliorino sent letters directly to the landlord and to other tenants, threatening disruption and harassment if Summit were allowed to move in to the building.

78. Summit's landlord, Jefferson Associates, Ltd., has notified the clinic that it will breach their lease and re-

fuse to let the clinic move into the new premises. The landlord, through Joel S. Lee, the President of its General Partner, Van Buren Management, Inc., has also advised Summit that it was forced by "Washington National" to terminate the lease with the clinic. On information and belief, the Washington National to which the landlord referred is Washington National Development Corporation or one of the operating subsidiaries of Washington National Insurance Company, which holds a mortgage on the premises which were subject to the Summit lease. Washington National's in-house counsel, Craig Edwards, has confirmed to plaintiffs' counsel that he spoke with Joel Lee about the lease, but has stated that he told Lee that Washington National would not withhold its approval of the lease. Summit's current lease has expired. Summit is continuing as a month-to-month tenant at its present location. Summit does not have a new location into which to move.

COUNT I: SHERMAN ANTI-TRUST ACT

79. Count I is brought against defendants Scheidler, Ryan, Terry, Scholberg, Murphy, Wojnar, Migliorino, PLAL, PDAL, OR, the Project (the "PLAN Defendants"), and Vital-Med.

80. Plaintiffs restate the allegations set forth in paragraphs 1 through 78.

81. The agreement among and the activities of the PLAN Defendants and Vital-Med are designed to, and threaten to, restrain interstate trade.

82. The agreement among and the activities of the PLAN Defendants and Vital-Med have, and threaten to have, an anti-competitive effect.

83. Women's health centers throughout the United States, including DWHO and Summit, have been damaged, and are threatened with damage by reason of the actions of the PLAN Defendants and Vital-Med.

84. Women, including NOW members, who seek abortions and other services offered by women's health centers have been damaged, and are threatened with damage, by reason of the PLAN Defendants' and Vital-Med's actions.

85. The purpose of the PLAN Defendants' and Vital-Med's actions is to force all clinics that perform abortions out of business and to eliminate the choice of abortion for women who are pregnant.

86. The PLAN Defendants' and Vital-Med's actions have forced, and threaten to force, women's health centers that perform abortions out of business.

87. The PLAN Defendants' and Vital-Med's actions have increased the cost, and threaten to increase the cost, of having an abortion by compelling women's health clinics to incur, and to raise their charges to cover, the expense of increased security, higher insurance premiums, higher rents, and mounting legal fees, among other things.

88. The PLAN Defendants' and Vital-Med's actions have made it, and threaten to make it, more difficult for women to obtain abortions, birth control, fertility treatment, pregnancy testing, counseling and other gynecological services.

89. Women's health centers whose cost [*sic*] increase are less able to compete with other facilities offering the same or similar services.

90. The PLAN Defendants' and Vital-Med's actions have been designed to interfere with, and threaten to interfere with the on-going business and contractual relationships women's health centers have with patients, laboratories, lessors, doctors, employees, and others.

91. The PLAN Defendants' and Vital-Med's actions have increased, and threaten to increase, the risk of medical complications faced by women who seek abortions

by forcing such women to postpone abortions or by exposing such women to a pattern of harassing and intimidating conduct designed to create stress and to stop them forcibly from exercising their choice to have an abortion.

92. NOW has been frustrated, and is threatened with being frustrated, by the defendants' actions in its efforts to ensure that women continue to have access to safe, economical abortions and family planning services. NOW has had to devote significant resources to identify and counteract the defendants' actions.

93. The PLAN Defendants' and Vital-Med's actions violate the rights of NOW, DWHO and Summit and all similarly-situated women's health centers, and their current and prospective patients, to be free of restraints and threatened restraints of trade under section one of the Sherman Anti-Trust Act, 15 U.S.C. Section 1.

WHEREFORE, plaintiffs pray that this Court:

(1.) Certify this case as a plaintiffs' class action;

(2.) Declare that the actions of PLAN Defendants and Vital-Med have violated the rights of NOW, DWHO and Summit and all similarly-situated women's health centers, and their current and prospective patients, to be free of restraints of trade under section one of the Sherman Anti-Trust Act, 15 U.S.C. 1;

(3.) Enjoin the PLAN Defendants and Vital-Med from carrying out a concerted effort to drive women's health centers such as DWHO and Summit out of business;

(4.) Enjoin the PLAN Defendants and Vital-Med from using unlawful means to drive women's health centers such as DWHO and Summit out of business;

(5.) Award DWHO, Summit and all similarly situated women's health centers treble damages from the PLAN Defendants and Vital-Med;

(6.) Grant plaintiffs their costs in this action and reasonable attorneys' fees; and

(7.) Grant such other and further relief as the Court deems just and proper.

COUNT II: RICO—SECTION 1962(a)

94. Count II is brought against the defendants Scheidler, Terry, Scholberg, Murphy, PLAL, OR and the Project (the "RICO Defendants") by plaintiffs DWHO and Summit and the class they represent, which reallege paragraphs 1 through 78.

95. PLAN is an enterprise under 18 U.S.C. Section 1961 (4) engaged in and affecting interstate commerce. PLAN is an association of individuals and groups with common purposes, including driving all clinics that provide abortion services out of business and preventing the plaintiff clinics from conducting business. PLAN is wholly distinct from the pattern of racketeering activity engaged in by each defendant.

96. PLAL, OR and the Project are each enterprises under 18 U.S.C. Section 1961 (4) engaged in and affecting interstate commerce. The common purpose of each association is to drive clinics that provide abortion services out of business. PLAL, OR and Project Life are distinct from the pattern of racketeering activity engaged in by each defendant.

97. Defendants Scheidler, Scholberg, Murphy, Wojnar, PLAL, Terry, OR and the Project, each a person under 18 U.S.C. Section 1961 (3), receive income, directly or indirectly, from a pattern of racketeering activity that includes predicate offenses in violation of 18 U.S.C. Section 1951 (the "Hobbs Act"). Defendants conspired to, attempted to or did wrongfully use threatened or actual force, violence or fear to induce or attempt to induce the employees of affected clinics to give up their jobs; doctors involved with affected clinics to give up their economic

right to practice medicine at the plaintiff clinics; patients of affected clinics to give up their right to obtain services at the plaintiff clinics; and prospective patients of clinics to give up their constitutional right to decide whether and where to obtain medical services free from fear of violence or threatened or actual force.

98. Specifically, the RICO Defendants have committed the following predicate acts among others:

a. Attempts, conspiracies to commit and commission of extortion against the Women's Awareness Clinic, its employees, doctors, patients, and prospective patients in Fort Lauderdale, Florida, by persons attending the 1984 national Pro-Life Conference, at which defendant Scheidler presented a workshop;

b. Conspiracy to commit extortion by defendant Scheidler and others associated with him as part of their participation in the 1985 PLAN Conference against anyone receiving or performing an abortion;

c. Conspiracy to commit extortion by persons attending a March 25, 1986, workshop let [*sic*] by defendants Scheidler and others associated with defendants in Pensacola, Florida, which organized persons to attempt or commit extortion to drive the Ladies Center and similar women's health centers out of business;

d. Attempted extortion and the commission of physical violence against persons on March 26, 1986, when John Burt physically injured the president of the local NOW chapter and others in the course of efforts by defendants Scheidler, PLAL, and others associated with them to shut down the Ladies Center by committing extortion. John Burt wrongfully threatened and used actual force to induce the employees of affected clinics to give up their jobs; doctors involved with affected clinics to give up their economic right to practice medicine at the plaintiff clinics; patients of affected clinics to give up their right to obtain services at the plaintiff clinics; and prospective

patients of clinics to give up their constitutional right to decide whether and where to obtain medical services free from fear of violence or threatened or actual force;

e. The destruction of medical supplies by Joan Andrews on March 26, 1986 in the course of efforts by defendants Scheidler, PLAL, and others associated with them to shut down the Ladies Center and in furtherance of a plan to commit extortion by using threatened or actual force or fear to induce the Ladies Center's employees, doctors, patients, and prospective patients to relinquish their economic rights and property interests;

f. Attempts, conspiracies to commit and commission of extortion against the Regency Park Center, its employees, doctors, patients, and prospective patients in St. Louis, Missouri by persons attending the 1986 PLAN Conference, in which defendants participated as organizers and workshop presenters;

g. Attempted extortion by defendant Scheidler on April 11, 1986, when Scheidler threatened DWHO's clinic administrator with reprisals if she refused to quit her job at the clinic in order to induce the clinic administrator to quit that job;

h. Attempts, conspiracies to commit and commission of extortion against the Women's Health Center, its employees, doctors, patients, and prospective patients in Atlanta, Georgia by persons attending the 1987 PLAN Conference, in which defendants took part;

i. Attempts, conspiracies to commit and commission of extortion at a series of OR actions, including:

(1) A "field training" action on November 28, 1987 and continuous actions since then directed at the Cherry Hill Women's Center in Cherry Hill, New Jersey, in which Terry, OR, the Project, and others associated with them have blocked access to the clinic, among other actions;

(2) Four days of blocking the entry to clinics in New York City and Hicksville, Long Island from May 2 to May 6, 1988. Terry was an organizer and Scheidler served as official marshal for the New York action. Terry, Scheidler and other PLAL employees were among those arrested at the New York actions;

(3) Nearly four months of actions, beginning July 19, 1988, directed against clinics in Atlanta, Georgia. More than 1200 participants in these actions, including Terry and others associated with him, were arrested for charges including inciting police assault, assaulting a police officer, terrorist acts, false imprisonment and trespass;

(4) A 40-city National Day of Rescue on October 29, 1988, organized by defendants Terry, Scheidler, PLAL, OR, the Project and others associated with them to block access to clinics to force and attempt to force clinics to close;

j. Attempts, conspiracies to commit and commission of extortion in 1988 by defendants Scheidler, Murphy, Migliorino, Wojnar, PLAL, and others associated with them against patients and prospective patients of clinics affiliated with plaintiffs DWHO and Summit. Specifically, (i) Scheidler, Wojnar, Murphy, Migliorino, PLAL and others associated with them conspired to steal and hide the fetuses, and (ii) Scheidler, Murphy, Migliorino, PLAL, and others (a) threatened to disclose confidential information about previous patients of these clinics, in connection with the theft of fetal remains from Vital-Med; and (b) publicized and conducted funeral masses and burials for the stolen fetuses. The said defendants committed the above acts in order to induce fear in prospective patients and thus force them to forego the right to decide where to seek medical services free from pressure by defendants and others;

k. Attempts and conspiracies to commit extortion by Scheidler, Murphy, Migliorino, Wojnar, PLAL, and others associated with them against doctors working with clinics affiliated with plaintiffs DWHO and Summit. Specifically, the said defendants and others affiliated with them (1) threatened to disclose, and in some cases did disclose the identity of these doctors, in connection with the theft of fetal remains from Vital-Med; and (2) conducted and publicized fetal funerals. The said defendants committed the above acts in order to induce fear in the doctors to force them to forego the economic benefits of their involvement with the clinics; and

l. Attempts and conspiracies to commit extortion by Scheidler, Murphy, Migliorino, Wojnar, PLAL, and others associated with them against clinics affiliated with plaintiffs DWHO and Summit. Specifically, the said defendants and others (1) illegally stole, hid and transported fetal specimens from Vital-Med in Northbrook, Illinois to Fargo, North Dakota, Ft. Wayne, Indiana, Raleigh, North Carolina, Wilmington, Delaware, and Milwaukee, Wisconsin; (2) threatened to disclose confidential information about patients and the identities of doctors in connection with the theft of fetal remains from Vital-Med; (3) publicized and conducted funeral masses and burials for the stolen fetuses. The said defendants and others affiliated with them committed the above acts to induce the clinics to fear the economic losses that would result both from the invasion of privacy of clinic patients and doctors and from negative publicity associated with the fetal funerals. Thus Scheidler, PLAL, and the others attempted and conspired to force the clinics to stop providing abortion services.

99. Each of the attempts and conspiracies to commit extortion obstructed, delayed, and/or affected interstate commerce insofar as it succeeded. Each of the successful conspiracies to commit or commissions of extortion, and the physical violence committed by John Burt and

Joan Andrews in furtherance of plans to commit extortion, obstructed, delayed and/or affected interstate commerce.

100. The income the PLAN Defendants receive from their pattern of racketeering activity includes contributions received by these defendants in support of their extortionate acts. Defendants Scheidler, Scholberg, Murphy and Terry also receive or have received salaries or other payments and benefits, including, in the cases of Scheidler, Scholberg and Murphy, the personal use of a car owned by PLAL, because of their involvement in the pattern of racketeering activity.

101. Defendants Scheidler, Scholberg, Murphy and PLAL used or invested, directly or indirectly, income received from a pattern of racketeering activity, or the proceeds from that income, to establish or operate PLAN and the PLAL.

102. Defendants Ryan and the PDAL used or invested, directly or indirectly, income received from a pattern of racketeering activity, or the proceeds from that income, to operate PLAN and the PDAL.

103. Defendants Terry, OR and the Project used or invested, directly or indirectly, income received from a pattern of racketeering activity, or the proceeds from that income to operate PLAN, OR and the Project.

104. Each defendant's violation of 18 U.S.C. Section 1962(a) has injured the business and/or property interests of the plaintiffs and the class members. The RICO Defendants' investment of income received from the pattern of racketeering activity or the proceeds therefrom has injured plaintiffs by furthering those illegal goals of PLAN, and/or PLAL, OR or the Project which involve extortionate and anticompetitive activities against abortion providers.

105. Specifically, the RICO Defendants' activities have decreased the business of, and/or increased the cost of

doing business at DWHO, Summit, and similarly-situated clinics. The RICO Defendants' activities have injured the plaintiff class of female NOW members and other women who have been unable to obtain abortion services, or whose choice of clinics that provide these services has been restricted, by depriving them of the right to choose freely between abortion providers in an unthreatened marketplace and to reap the economic and medical advantages of having that choice.

WHEREFORE, plaintiffs ask that this Court certify this case as a plaintiffs' class action; award plaintiffs DWHO and Summit treble damages, to be proved at trial, along with costs, attorneys' fees, and grant all other relief to which plaintiffs may be entiled.

COUNT III: RICO—SECTION 1962(c)

106. Count III is brought against the RICO Defendants and defendant Migliorino by plaintiffs DWHO and Summit and the class of clinics they represent, which reallege paragraphs 1 through 78, and 95 through 105.

107. Defendants Scheidler, Terry, Scholberg, Murphy and Migliorino, each persons under 18 U.S.C. Section 1961 (3), are associated with PLAN by virtue of their involvement in its annual conventions as speakers and in other capacities. Defendants Scheidler and Terry are also associated with PLAN by virtue of their positions on its leadership council.

108. Defendants PLAL, OR and the Project, each a person under 18 U.S.C. Section 1961 (3), are associated with PLAN and are constituent groups that comprise PLAN. In addition, they are associated with PLAN through the roles of their respective current or former directors, Scheidler and Terry, in PLAN.

109. Each RICO Defendant and Migliorino conducted and participated in PLAN's affairs through a pattern of racketeering activity. The predicate acts comprising the

pattern of racketeering activities include those acts described in paragraph 99 [*sic*] above. As a consequence of the pattern of racketeering activity, defendants Scheidler, Terry, Scholberg, Murphy, Wojnar and Migliorino, and through them PLAL, OR, and the Project have obtained and maintained significant roles in PLAN.

110. As a result of each defendant's violation of 18 U.S.C. Section 1968(c), plaintiffs have suffered the injuries described *supra* in paragraphs 104-105.

WHEREFORE, plaintiffs ask that this Court certify this case as a plaintiffs' class action, award plaintiffs DWHO and Summit treble damages, to be proved at trial, along with costs, attorneys' fees, and grant all other relief to which plaintiffs may be entitled.

COUNT IV: RICO—SECTION 1962(d)

111. Count IV is brought against the RICO Defendants by plaintiffs DWHO and Summit and the class of clinics which they represent, which reallege paragraphs 1 through 78, 95 through 105 and 107 through 110 above.

112. Defendants Scheidler, Scholberg, Murphy, and Terry conspired with each other and other persons to use the income they received from a pattern of racketeering activity, or the proceeds therefrom, to establish or operate PLAN, in violation of 18 U.S.C. 1962(d). Each of these defendants further agreed to the commission of the extortionate acts from which the above-mentioned income would derive.

113. Defendants Scheidler, Scholberg, Murphy, Migliorino, Terry and on information and belief, Wojnar agreed with each other and other persons to conduct and/or participate in the affairs of PLAN. Each of these defendants further agreed to the commission of extortionate acts through which each defendant would conduct and/or participate in PLAN's affairs in violation of 18 U.S.C. 1962(d).

114. As a direct result of defendants' conspiracy in violation of 18 U.S.C. section 1962(d), plaintiffs have been injured in their business and/or property, as alleged in paragraphs 104-105 above.

WHEREFORE, plaintiffs ask that the Court certify this case as a plaintiffs' class action, award plaintiffs DWHO and Summit treble damages, to be proved at trial, along with other costs, attorneys' fees, and all grant [*sic*] other relief to which plaintiffs may be entitled.

COUNT V: TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

115. Count V is brought against defendants Scheidler, Scholberg, Murphy, Migliorino, Wojnar and the PLAL by DWHO and Summit, on their own behalf and not on behalf of any class. Plaintiffs reallege paragraphs 1 through 78.

116. DWHO, Summit, the Fargo Women's Health Organization, Inc., the Fort Wayne Women's Health Organization, Inc., and the Raleigh Women's Health Organization, Inc. are among nine affiliated clinics (the "WHO Clinics"). The WHO clinics, through their management company, National Women's Health Organization, Inc., had a contract with Vital-Med to provide abortion-related and other pathology services to the clinics. Vital-Med provided services to Summit since 1982 and has had a contractual relationship since 1984. As recently as August 27, 1988, Vital-Med and the WHO clinics had agreed on a fee schedule which would govern their contractual relationship in the future.

117. Before defendants engaged in the unlawful acts described above, DWHO and Summit had an expectancy of a valid business relationship with Vital-Med. On information and belief, each defendant was aware of that expectancy.

118. During 1988, defendants schemed to steal and send fetal specimens from Chicago to Fargo, Ft. Wayne, Raleigh, Milwaukee and Wilmington. Defendants or their followers, who knew of Vital-Med's contract with the WHO clinics, agreed with one or more Vital-Med employees that the employee(s) assist the defendants in stealing the specimens. After stealing the fetal remains, the defendants shipped them to a variety of locations across the country, and told the press that the specimens were being taken "home" to be buried. Based on information provided by the defendants, newspapers named Vital-Med as the source of the specimens.

119. In the week of November 7, 1988, Vital-Med terminated its contract to provide abortion-related pathology services to the WHO clinics. Vital-Med simultaneously wrote to the National Women's Health Organization, Inc. that it enjoyed their working relationship and would continue to provide the clinics with services related to processing PAP smears.

120. Upon information and belief, each defendant intentionally, maliciously and without justification induced Vital-Med to terminate its business with the WHO clinics. Defendants' theft of the specimens was an illegal and improper act designed to induce Vital-Med's termination of its relationship with the WHO clinics.

121. Each defendant's interference with the plaintiff clinics' prospective economic advantage is improper and unjustified. Defendants have committed illegal acts in order to interfere with the plaintiff clinics' business expectancies.

122. As a result of defendants' tortious interference with the ongoing business relationship between the WHO clinics and Vital-Med, the WHO clinics have incurred and will incur damages in obtaining new sources for laboratory testing and medical waste disposal services.

WHEREFORE, plaintiffs ask that this Court award DWHO and Summit compensatory and punitive damages for defendants' tortious interference with their contracts with Vital-Med, costs, and all other relief to which they are entitled.

COUNT VI: TORTIOUS INTERFERENCE WITH EXISTING BUSINESS RELATIONSHIP

123. Count VI is brought against defendant Migliorino by Summit, on its own behalf, and not on behalf of any class. Summit realleges paragraphs 1 through 78.

124. On July 26, 1988, Summit entered into a lease with Jefferson Associates, Ltd. for space in the Jefferson Building to be used as a clinic in Milwaukee, Wisconsin.

125. Defendant Migliorino, who knew of Summit's lease of space in the Jefferson Building, sent a letter dated October 4, 1988 to other tenants in the Jefferson Building and businesses located in the area surrounding the building. This letter threatened controversy and conflicts with anti-abortion activists if Summit were allowed to enjoy the benefits of its lease. Specifically, Migliorino threatened weekly pickets and demonstrations, including sit-ins in the building lobby, chaining building doors closed and blocking doors with cars. She threatened that female business clients of other businesses would be suspected of going to the clinic and would be harassed by so-called sidewalk counselors. She also made reference to the press coverage of the stolen fetal remains and the fetal funeral in Milwaukee to demonstrate the lengths to which she and her associates would go to prevent Summit from operating its business.

126. Migliorino asked the other tenants and businesses to send letters of opposition to Joel S. Lee, President of Van Buren Management, Inc., the general partner of Jefferson Associates, Ltd. She stated that "Joel S. Lee, however, welcomes your protest on this matter and if

tenants are opposed, the mortgage lender *will not* approve the lease." (Emphasis in original.) Upon information and belief, the lender was Washington National Development Corporation, a subsidiary of Washington National Insurance Company.

127. Jefferson Associates, Ltd. has now informed Summit that Summit will not be allowed to move into the Jefferson Building pursuant to the lease. Defendant Migliorino has taken credit publicly for causing the landlord to breach the lease.

128. Migliorino intentionally and without justification induced Jefferson Associates, Ltd. to breach its contract with Summit. Her actions were an illegal and improper inducement of Jefferson Associates, Ltd.'s cancellation of the lease.

129. As a result of defendant's tortious conduct and Jefferson Associates, Ltd.'s resulting breach of contract, Summit has incurred and will incur damages in obtaining a lease for other premises.

WHEREFORE, plaintiffs ask that this Court award Summit damages for defendant's tortious interference with its contract with Jefferson Associates, Ltd., punitive damages, costs, and all other relief to which they are entitled.

COUNT VII: BREACH OF DUTY OF CONFIDENTIALITY

130. Count VII is brought against Vital-Med by DWHO and Summit, which reallege paragraphs 1 through 78.

131. Vital-Med knew that a doctor-patient relationship existed with regard to the fetal specimens sent by the plaintiff clinics to Vital-Med for testing and disposal, and that confidentiality was owed by the clinics and the doctors to the women who had abortions. Vital-Med had a duty

of confidentiality to the plaintiff clinics and the women whose fetal specimens were sent for pathology testing and disposal. Nevertheless, Vital-Med failed to establish and follow any security procedures to provide confidentiality regarding the names of the clinics, the doctors and the women who had abortions at DWHO, Summit and their affiliated clinics and to ensure proper sanitary disposal of the remains.

132. As a result of Vital-Med's tortious conduct, DWHO and Summit have incurred and will incur damages.

WHEREFORE, plaintiffs ask that this Court award DWHO and Summit damages, costs and all other relief to which they are entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served the persons on the attached Service List, a true and correct copy of Plaintiffs' SECOND AMENDED COMPLAINT by mail, proper postage prepaid, first class, from a United States mail depository located at 200 West Adams Street, Suite 2701, Chicago, Illinois, this 22nd day of September, 1989.

/s/ Fay Clayton
FAY CLAYTON